NOTES

ON

PERUSING TITLES

NOTES

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PERUSING TITLES

CONTAINING

OBSERVATIONS ON
THE POINTS MOST FREQUENTLY ARISING
ON A PERUSAL OF TITLES
TO REAL AND LEASEHOLD PROPERTY

WITH

AN EPITOME OF THE NOTES ARRANGED BY
WAY OF REMINDERS

BEING

AN ATTEMPT TO REDUCE THE PERUSAL OF
ABSTRACTS TO A SYSTEM

BY

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PREFACE.

PERHAPS one of the most difficult and responsible duties of a Solicitor is the perusal of an Abstract of Title, requiring as it does, not only a knowledge of law extending over a wide range of subjects, but the knack of concentrating such knowledge on the Abstract in hand, and of recognising at a glance a defect where it occurs.

The aim of these Notes is to help the reader to focus his knowledge as much as possible on the subjects most frequently arising, and most needful to be remembered on a perusal of Abstracts, and to remind him of the special points which should be provided for in a particular part of a Deed.

The Notes have been arranged on a practical basis, with a view of assisting the memory and facilitating reference to the point required. Each part of a Deed is separately considered; and the questions generally arising on Wills and Settlements are specially dealt with. A separate chapter is devoted to Copyholds. The Notes have been condensed as far as consistent with lucidity, and an authority given for nearly every statement made therein. As far as possible, only recent decisions have been referred to. A perusal of these will generally refer the reader to the earlier decisions.

In addition, an Epitome of the Notes has been added by way of "Reminders," to be glanced over after the perusal of an Abstract, thus rendering the danger of overlooking the points referred to therein less likely to occur.

To increase the practical utility of the book, it contains a Table of Cases Cited and a full Analytical Index; but, to keep it within convenient limits, various special subjects which the Conveyancer would hardly approach without consulting a text-book thereon have been left untouched—notably, Registration under The Land Transfer Act, 1875.

The writer's rough memoranda on which these Notes were founded originally appeared in a series of articles in *The Law Gazette*.

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Sheffield,
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ABBREVIATIONS USED IN CITATION OF REPORTS.

Abbreviation.	Name of Reports.	Court.	Date.
Ad. & El. ...	Adolphus & Ellis	Queen's Bench ...	1834-1841
Atk.	Atkyns (*temp.* Hardwicke)	Chancery	1736-1754
B. & C. ...	Barnewall & Cresswell ...	Queen's Bench ...	1823-1830
Beav.	Beavan	Rolls	1840-1857
Bing.	Bingham	Common Pleas ...	1822-1834
Bing. N. C....	do. (New Cases) ...	do.	1834-1840
Burr.	Burrow	Queen's Bench ...	1756-1772
Cary	Cary	Chancery	(*Temp.* Eliz.) 1558-1603
Ch. D.	Law Reports, Chancery Division	Chancery Division, Chief Judge in Bankruptcy, Appeals therefrom, and in Lunacy	1875 to present date.
Co.	Coke	Queen's Bench ...	1568-1611
Col.	Collyer	V. C. Bruce	1844-1846
C. B.	Common Bench Reports...	Common Pleas ...	1845-1857
C. B., N. S....	do. (New Series)	do.	1857-1865
C. P. D. ...	Law Reports, Common Pleas Division	Common Pleas Division and Court of Appeal	1875-1881
Cro. Eliz. Jac. & Car., or Cro. 1, 2, 3.	Croke (*temp.* Eliz., James and Charles)	Queen's Bench ...	1581-1641
Cr. & M. ...	Crompton & Meeson ...	Exchequer	1832-1834
De G. F. & J.	De Gex, Fisher & Jones ...	Chancery and Bankruptcy Appeals ...	1859-1862
De G. & J. ...	De Gex & Jones	do. ...	1857-1859
De G. J. & S.	De Gex, Jones & Smith ...	do. ...	1862-1865

Abbreviation.	Name of Reports.	Court.	Date.
De G. & S. ...	De Gex & Smale	V. C. Bruce and V. C. Parker	1846-1852
D. M. & G. ...	De Gex, Macnaghten & Gordon	Chancery Appeals ...	1851-1857
Dick.	Dickens	Chancery	1559-1792
Drew.	Drewry, Chancery Reports	V. C. Kindersley ...	1852-1857
Dr. & S. ...	Drewry & Smale	do. ...	1859-1865
Dr. & W. ...	Drury & Walsh	Irish Chancery ...	1837-1840
East	East...	Queen's Bench ...	1801-1814
E. & B. ...	Ellis & Blackburn	do.	1834-1857
Exch. Rep. ...	Exchequer Reports ...	Exchequer	1847-1857
Ex.	Law Reports, Exchequer Division	Exchequer Division and Court of Appeal	1875-1881
Giff.	Giffard	V. C. Stuart	1857-1865
Ha.	Hare	V. C. Wigram	1841-1853
H. & C. ...	Hurlstone & Coltman ...	Exchequer	1862-1867
H. & N. ...	Hurlstone & Norman ...	do.	1855-1856
Ir. R. Eq. ...	Irish Equity Reports ...	Irish Chancery ...	1838-1848
J. & H. ...	Johnson & Hemming ...	V. C. Wood	1860-1862
J. & L.... ...	Jones & Latouche (*temp.* Sugden)	Irish Chancery ...	1844-1846
J. & W. ...	Jacob & Walker	Chancery	1819-1821
Jur.	Jurist Reports	All Courts	1837-1854
Jur., N. S. ...	do. (New Series)	do.	1855-1880
K. & J. ...	Kay & Johnson	V. C. Wood	1854-1857
L. J.	Law Journal (New Series)	All Courts	1831 to present date.
L. R., H. L....	Law Reports, House of Lords	House of Lords ...	1865-1875

Abbreviation.	Name of Reports.	Court.	Date.
L. R., Q. B. or Q. B. D.	Law Reports, Queen's Bench Cases	Queen's Bench ...	1865-1875
L. R., App. Cas.	Law Reports, Appeal Cases	House of Lords and Judicial Committee of Privy Council	1875 to present date.
L. R., Ch. D.	Law Reports, Chancery Division	Chancery Division, Chief Judge in Bankruptcy, Appeals therefrom, and in Lunacy	1875 to present date.
L. R., C. P. D.	Law Reports, Common Pleas Division	Common Pleas Division and Court of Appeal	1875-1881
L. R., Eq. ...	Law Reports, Equity Cases	... ...	1865-1875
L. R., Ex. ...	Law Reports, Exchequer Division	Exchequer Division and Court of Appeal	1875-1881
L. R., Prob....	Law Reports, Probate Division	Probate and Divorce, also Admiralty and Ecclesiastical Divisions, Privy Council, and Court of Appeal	1875 to present date.
L. T.	Law Times...	All Courts	1843 to present date.
Lev.	Levinz's	Queen's Bench ...	1660-1696
Ld. Raym. ...	Lord Raymond	do.	1694-1730
Mac. & G. ...	Macnaghten & Gordon ...	Chancery	1849
Madd. & Gel.	Maddock & Geldart ...	do.	1821
Mann. & Gr.	Manning & Granger ...	Common Pleas ...	1840-1844
M. & S. ...	Maule & Selwyn	Queen's Bench ...	1813-1817
M. & W. ...	Meeson & Welsby	Exchequer	1836-1847
M. & B. ...	Montagu & Bligh	Bankruptcy	1832-1838
My. & Cr. ...	Mylne & Craig	Lord Cottenham and Sir J. Leach	1837-1848
My. & K. ...	Mylne & Keen	Lord Brougham and Sir J. Leach	1831-1835
N. & P. ...	Neville & Perry	Queen's Bench ...	1836-1838
N. R.	New Reports	All Courts	1862-1865
P. Wms. ...	Peere Williams	Chancery	1695-1734
Phil.	Phillimore	Ecclesiastical	1809-1821
Ph.	Phillips	Chancery	1841-1849

Abbreviation.	Name of Reports.	Court.	Date.
Q. B. or Q. B. D.	Law Reports, Queen's Bench Cases	Queen's Bench ...	1865-1875
Q. B. Rep. ...	Queen's Bench Reports ...	do.	1834-1857
Raym. Ld. ...	Raymond, Lord	Queen's Bench ...	1694-1730
Rep.	Coke	All Courts	1611-1658
Rob.	Robertson	Ecclesiastical	1844-1855
Russ.	Russell	Chancery	1826-1828
Sc.	Scott	Common Pleas ...	1834-1840
Sco. N. R. ...	Scott's New Reports ...	do.	1840-1845
Sim.	Simons	V. C. Shadwell ...	1826-1848
S. & S.... ...	Simons & Stuart	Chancery	1822-1826
Sm. & G. ...	Smale & Giffard	V. C. Stuart	1852-1857
Str.	Strange	Queen's Bench	1716-1747
Swan.	Swanston	Chancery	1818-1819
Taunt.... ...	Taunton	Common Pleas ...	1807-1819
T. R.	Term Reports (same as Durnford & East) ...	Queen's Bench ...	1785-1800
Th.	Thornton, Notes of Cases	Ecclesiastical	1841-1850
Vern.	Vernon	Chancery	1680-1711
V. or Ves. Sen.... ...	Vesey, senior (*temp.* Hardwicke)	do.	1746-1755
Ves. Jun. ...	Vesey, junior	do.	1789-1817
W. N.	The Weekly Notes (of the Law Reports)		
W. R.	Weekly Reporter	All Courts	1852-1882
Y. & C., Ex.	Younge & Collyer... ...	Exchequer, Equity ...	1834-1840
Y. & C. ...	Younge & Collyer, Chancery Cases	V. C. Bruce	1841-1844

PART I.

CHAPTER I.

THE CONTRACT.

THE ESSENTIAL POINTS of a Contract are—

1. The Names of the Vendor and Purchaser, or a sufficient description of them;
2. The Consideration;
3. A Description of the Property (*Dart's V. & P.*, 6th ed., p. 252); and
4. The Signature of the Party to be charged, or that of his authorised Agent (29 Car. II. c. 3, s. 4).

"Vendor" is not a sufficient description (*Sale v. Lambert*, L. R., 18 Eq. 1), nor the term "Landlord" (*Coombs v. Wilkes*, 65 L. T. 56). "The Proprietor" is sufficient; also "the Trustee for Sale" (*idem*, *Rossiter v. Miller*, 3 App. Cas. 1124); also "Owner" and "Mortgagee" (*Jarrett v. Hunter*, 55 L. T. 727). "The property purchased for £420 at the Sun Inn, Paxton, on the above date," was held to be a sufficient description (*Shardlow v. Cotterell*, 20 Ch. D. 90).

A bidder at an auction by the act of bidding impliedly authorises the auctioneer to sign the contract on his behalf, and cannot revoke such authority when the property has

been knocked down to him (1 *Prideaux*, 1893 ed., p. 4), though an agent authorised to find a purchaser is not authorised to sign a contract (*Hamer v. Sharp*, L. R., 19 Eq. 108). By The Public Health Act, 1875, s. 174, all contracts made by an urban authority, whereof the value or amount exceeds £50, must be under the common seal of the authority (see *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48; also *The Mayor &c. of Oxford v. Crow*, 69 L. T. 229).

An offer may be withdrawn so long as it remains unaccepted, although the person making the offer promises to keep it open for a specified time, such promise being void as a *nudum pactum* (1 *Prideaux*, p. 4). Where the contract has been effected by correspondence, an acceptance of an offer is complete from the time of posting, but a withdrawal of an offer does not date back to the time of posting, and is not effectual until brought to the mind of the person to whom the offer was made (*Henthorn v. Fraser*, 66 L. T. 439). Where there is a simple acceptance of an offer to purchase, accompanied by a statement that the acceptor desires that the arrangement should be put into more formal terms, the contract is complete and is not affected by the statement. But if it is intended that something more shall be done than putting the terms of the memorandum into more formal words, as, for instance, a term that the contract is to be approved by the solicitors of both parties, this shows that there are to be matters of negotiation to be settled, and until these are settled there is no contract (*Hawkesworth v. Chaffey*, 54 L. T. 72; *Page v. Norfolk*, 70 L. T. 781).

The mere statement by a vendor of the lowest price at which he will sell contains no implied contract that he will sell at that price to the person making the inquiry (*Harvey v. Facey*, 69 L. T. 504).

The notice to treat given by a company under the pro-

visions of The Lands Clauses Consolidation Act, 1845, fixes the obligation of the company to take and the owner to give up the lands mentioned therein (*Adams v. Blackwall Railway Co.*, 2 Mac. & G. 118). Notice to take part only of a house or other building does not amount to an agreement to take the whole, although under the 92nd Section of the Act the owners may, by counter notice, require the company to take the whole or nothing (*Richards v. Swansea Improvement Co.*, 9 Ch. D. 425); and thereupon a Court of Equity will restrain the company from taking less than the whole (*Sparrow v. O. W. & W. R. Railway Co.*, 2 D. M. & G. 94; *Dart*, 244). On sales to a company under the Act, whether such sales be compulsory or voluntary, the costs of the abstract, in the absence of a condition to the contrary, fall on the company (Section 82).

Neither the payment of a deposit on account of the purchase-money nor the delivery of an abstract amounts to a part performance, so as to take the case out of the Statute of Frauds (*Fry on Specific Performance*, 182).

The vendor's duty upon a sale is (subject to any special conditions) to prove his absolute right to convey free from encumbrances (*Dart's V. & P.*, 129). There is an exception to this rule in the case of a purchaser having at the time of signing the contract notice of defects in the vendor's title; but the rule, and not the exception, holds good if the contract expressly provides that a good title shall be shown (*re Gloag & Miller's Contract*, 23 Ch. D. 320; *Ellis v. Rogers*, 29 Ch. D. 661). Any defect in the vendor's title must, subject to any special condition in the contract, be made good at his expense (*re Moody & Yates*, 30 Ch. D. 344). The condition must clearly state what the defect consists of, or it can be disregarded (*St. Saviour's Trustees & Oyler*, 31 Ch. D. 412). So a condition requiring a purchaser to assume what the vendor

knows to be false can be disregarded (*re Banister*, 12 Ch. D. 131), but not if the vendor believes his assumption to be true (*in re Sandbach & Edmondson's Contract* [1891], 1 Ch. 99). A general condition that the property is sold subject to all easements affecting the same does not exempt the vendor from the obligation of disclosing an easement of which he was aware (*Heywood v. Mallalieu*, 25 Ch. D. 357). The condition that misdescription shall not annul the sale, but that compensation shall be paid, will apply only to small errors (*in re Beyfus & Masters' Contract*, 39 Ch. D. 110; *re Terry & White's Contract*, 32 Ch. D. 14). Where the particulars of sale stated that the property was let at £30 per year, and it was afterwards found that the rates and taxes were payable by the landlord, the purchaser was allowed compensation (*Bos v. Helsham*, L. R., 2 Ex. 72; see also *Barnes v. Wood*, L. R., 8 Eq. 424). A "clear yearly rent" means a rent clear of all outgoings, &c., usually borne by the tenant, but subject to such—*e.g.*, land tax—as are borne by the landlord (*Earl of Tyrconnell v. Duke of Ancaster*, 2 V. sen. 500). But a purchaser cannot ask for compensation if he was aware of the fact or defect (*Farebrother v. Gibson*, 1 D. & J. 602). In the case of leasehold property described as held under a lease, a good title is not made unless the lease is an original lease (*in re Beyfus & Masters' Contract*, *ante*). Although a purchaser will be deemed to have notice of the contents of a lease—unless the terms are onerous and he has not had an opportunity of inspecting same (*Reeve v. Berridge*, 20 Q. B. D. 523)—this will not preclude him from objecting or claiming compensation if the particulars contain any misrepresentation (*Weston v. Savage*, 10 Ch. D. 736).

The Conveyancing Act, 1881, s. 3, s.s. 6, does not relieve the vendor from the obligation of furnishing at his own expense an abstract of all documents forming the several

links in his title, whether they be in his possession or not (*in re Johnson & Tustin*, 30 Ch. D. 42; *re Moody & Yates*, 30 Ch. D. 344). Time as to delivery of abstract will be held to mean the delivery of a perfect abstract: *i.e.*, an abstract as perfect as the vendor could furnish at the time of delivery (*Hobson v. Bell*, 8 L. J., Ch. 241; *Morley v. Cook*, 2 Ha. 111). An abstract as delivered is presumed to be perfect, unless the contrary is shown (*Gray v. Fowler*, L. R., 8 Ex. 249). If the vendor does not deliver his abstract within the time mentioned in the contract, the purchaser need not deliver his requisitions within the limited time (*Upperton v. Nickolson*, L. R., 6 Ch. 436). A condition limiting the time for sending in requisitions on title does not bind the purchaser where the abstract shows no title at all (*Want v. Stallibrass*, 8 L. R., Ex. 175). Even when the vendor can show a good holding title, if it is one which the Court would not enforce, the purchaser can still rescind, even though his requisition is not in time (*Saxby v. Thomas*, 63 L. T. 695, and 64 L. T. 65; but see *in re Cox & Neve* [1891], 2 Ch. 109; see also *re Tanqueray, Willaume & Landau*, 20 Ch. D. 465).

Ford v. Hill (10 Ch. D. 365) decides nothing more than that every requisition must be specific. A vendor, to the best of his information, is bound to answer all relevant questions put to him in respect of the property which he has contracted to sell or the title thereto, unless his *primâ facie* liability in this respect is expressly negatived by the conditions (*Dart*, 167; see *Smith v. Robinson*, 13 Ch. D. 148). Under the condition of sale by which the vendor reserves to himself the right to rescind the contract on returning to the purchaser his deposit without interest and without costs, should the purchaser insist on any requisition, &c., which the vendor is unable or unwilling to comply with or remove, a vendor cannot refuse to answer reasonable requisitions

(*in re Dames*, 29 Ch. D. 626; *Mawson v. Fletcher*, L. R., 6 Ch. 91). Conditions like this are construed most strongly against the vendor (*Bowman v. Hyland*, 39 L. T. 90). The vendor must not play fast and loose with a purchaser, but must determine promptly whether he will exercise the power of rescission or not (*Smith v. Wallace*, 71 L. T. 817).

Unpaid vendors are bound, so far as they reasonably can, to keep the premises in the same condition as at the date of the contract (*Clarke v. Ramuz*, 65 L. T. 657, where a trespasser had removed soil), and, if houses, properly tenanted (*Malone v. Henshaw*, 29 L. R. Ir. 352; see also *Phillips v. Silvester*, 8 L. R., Ch. 173).

A purchaser paid a deposit to the vendor's solicitor as agent for the vendor. The sale went off. *Held*, That as the solicitor received the deposit as the vendor's agent, he was not liable to repay it to the purchaser (*Ellis v. Goulton*, 68 L. T. 144).

Where a testator specifically devises freehold property, and afterwards enters into a binding contract to sell the same, the legal estate will pass to the devisee, and can be passed to the purchaser by him, or by the personal representatives of the testator (Conveyancing Act, 1881, s. 4). "Personal representatives" would seem to include an administrator as well as an executor (*in re Clay & Tetley*, 16 Ch. D. 3). In the above case the persons to give a receipt for the purchase-money would be also the personal representatives of the testator, as the contract, by converting the land into personalty, revokes, in effect, the devise (*Lumsden v. Fraser*, 12 Sim. 263). Had the devise been after the contract, the devisee would be the person to give a receipt for the purchase-money (*Drant v. Vause*, 1 Y. & C. 581; *Weeding v. Weeding*, 1 J. & H. 424).

By Section 6 of The Settled Land Act, 1890, a tenant for life may make a conveyance to give effect to a contract entered into by a predecessor in title.

The results of the cases as to when a purchaser is entitled to rescind are conveniently stated in 1 *Prideaux*, under the heading "Conditions of Sale," and are—

(1) If the vendor's misstatement is wilful;

(2) If the effect of making the purchaser complete would be to put upon him something constitutionally different from that for which he contracted;

(3) If the misdescription is such that it may be reasonably supposed that but for such misdescription he would not have entered into the contract at all; and

(4) If the misdescription is not capable of compensation.

Where a blot on the title is purely theoretical and not a practical blot, and the vendor offers to give an indemnity, the purchaser's objection must be considered to be sufficiently answered (*re Heaysman's & Tweedy's Contract*, 69 L. T. 89).

A summons under The Vendors and Purchasers Act, 1874, s. 9, cannot be issued if either the existence or the validity of the contract is disputed (see *re Hargreaves & Thompson*, 32 Ch. D. 454).

CHAPTER II.

ROOT OF TITLE.

Where Formal Contract.

Although the date of the commencement of the title is fixed by the contract, there is nothing to prevent the purchaser from showing *aliunde* that the earlier title is bad (*Jones v. Watts*, 43 Ch. D. 574; *Else v. Else*, L. R., 13 Eq. 196; *Waddel v. Wolfe*, L. R., 9 Q. B. 515; *Smith v. Robinson*, 13 Ch. D. 148). But the purchaser cannot take the initiative and obtain rescission if the conditions expressly provide that the prior title shall not be required, investigated, or objected to, unless he can show that the vendor knew that he could not convey what he contracted to do, and so, in concealing it, was guilty of fraud (*in re National Provincial Bank of England & Marsh*, 71 L. T. 629). But the purchaser could successfully resist an action for specific performance.

A purchaser is not bound to accept a title commencing with a voluntary settlement, unless the nature of the deed is stated in the contract (*in re Marsh & Earl Granville*, 24 Ch. D. 11).

See also remarks under the next heading.

In Open Contract.

Freeholds and Copyholds.—Forty years' title can be asked for in the case of freeholds and copyholds (Vendors and Purchasers Act, 1874, s. 1).

Leaseholds.—In the case of leaseholds, the purchaser is entitled to an abstract of the lease, though more than sixty years old (*Frend v. Buckley*, L. R., 5 Q. B. 213), and forty years' title back from date of purchase (Vendors and Purchasers Act, 1874, s. 1). If the lease is a recent one,

unless the lessor's title is well known, the purchaser should, if he can by any means do so, inspect it, as the lessor's qualified covenant for quiet enjoyment gives no remedy, even against the lessor personally, for an eviction by title paramount (*Line v. Stephenson*, 6 Bing. N. C. 183). A lessee from the freeholder, although, by reason of the provisions of The Conveyancing Act, 1881, he cannot ask to inspect the lessor's title, still has constructive notice thereof (*Patman v. Harland*, 17 Ch. D. 353).

The title of the lessor to the freehold cannot, of course, be asked for (Vendors and Purchasers Act, 1874, s. 2); but it seems that in the case of property held on underlease the title to the leasehold reversion can be asked for, and that the words " leasehold reversion " in The Conveyancing Act, 1881, s. 3, refer to the reversion to the lease out of which the sub-lease is granted (*Gosling v. Woolf*, 68 L. T. 89; see also Conveyancing Act, 1881, s. 13). On the sale of renewable leaseholds, if the existing lease states, as commonly happens, the surrender of a former lease as part of the consideration for the demise, the purchaser may call for the title to the former lease up to forty years before the sale (*Hodgkinson v. Cooper*, 9 Beav. 304); for, supposing the renewal to have been obtained by a trustee, it would inure for the benefit of all who were beneficially interested in the former lease (1 *Byth. & Jar.*, 69).

Appointment.—If the appointment is forty years old, probably the purchaser could not ask for the instrument creating power (Conveyancing Act, 1881, s. 3, s.s. 1).

Reversionary Interest.—Purchaser can ask for abstract of document creating, and forty years' title back (Vendors and Purchasers Act, 1874, s. 1). An inclosure award does not seem to be a good root of title, as it is not conclusive as to the title of the allottee (*Jacomb v. Turner* [1892], 1 Q. B. 47); except where the case falls within the General Inclosure

Act (6 & 7 Will. IV. c. 115) or 3 & 4 Vict. c. 31, which provide that awards made thereunder shall be conclusive as to the title of the allottee (*Dart*, 187); and except the award is an old one. Where an award has been acted on for a great number of years without dispute, the Court will not consider whether the award was or was not originally *ultra vires* (*Micklethwait v. Vincent*, 69 L. T. 57).

Possessory Title.—An agreement to accept a possessory title merely points to the evidence by which it is to be supported, and the vendor is still bound to prove forty years' possession (*Douglas v. L. & N. W. Railway Co.*, 3 K. & J. 173); and it would seem that a title founded on parol evidence of adverse possession under the Statute of Limitations would be forced on a purchaser (*Sands to Thompson*, 22 Ch. D. 614; *Games v. Bonnor*, 33 W. R. 64). Subsequent acknowledgment will not restore a title which has once been barred (*Sanders v. Sanders*, 19 Ch. D. 373).

Devise.—Where the title commences with a general devise, the testator should ask for proof of testator's seizin, but, it seems, not where the title commences with a specific devise (1 *Preston on Abstracts*, 17). It was held by Vice-Chancellor Malins (*Bolton v. London School Board*, 38 L. T. 277) that a recital of the vendor's seizin contained in a deed twenty years old was sufficient, and that a forty years' title could not be asked for. Although the decision has not yet been distinctly overruled, it seems to be the general opinion that it was wrongly decided. See more fully as to this under heading "Recitals."

Whether a purchaser can as a matter of right, unless precluded by condition, claim to inspect the earlier title deeds than those abstracted seems doubtful; but the better opinion is that, as they clearly constitute part of the title, he is entitled to inspect them, though at his own expense (*Dart*, 105).

PART II.

CHAPTER I.

THE VARIOUS PARTS OF A DEED.

Date of Deed.

A Deed is good although it bears no date, or bears an impossible date or a false date, provided the real date of its delivery can be proved (*Goddard's Case*, 2 Rep. 4 *b*).

Until the time of Edward II. and Edward III. deeds bore no date (*Elphinstone's Interpretation of Deeds*, 122). A deed takes effect from the time of its delivery, and not of its date (*Clayton's Case*, 5 Rep. 1), and evidence is admissible to prove the date of delivery (*idem*).

A deed is not vitiated by filling in a proper date after its execution (*Keane v. Smallbone*, 17 C. B. 179).

Where two deeds relating to the same subject matter are executed on the same day—*i.e.*, a conveyance and mortgage—the Court will presume that they were executed in such an order as to give effect to the manifest intention (*Gartside v. Silkstone & Dodworth Coal & Iron Co.*, 21 Ch. D. 762).

Parties.

Generally.

When a person or corporation is once properly described, a subsequent error in referring to the name is immaterial,

unless it be from uncertainty, by producing a doubt as to who is the grantor or grantee (1 *Pres.* 62), and evidence may be adduced to correct an erroneous description of the parties (1 *Dav. Prec.* 41), or to identify the parties: *i.e.*, where a firm is made a party, evidence is admissible to show who constituted the firm at that date (*Carruthers v. Sheddon*, 6 Taunt. 14). Since October 1, 1845, a person has been able to take an interest in land under an indenture without being a party thereto (8 & 9 Vict. c. 106, s. 5). An assignment of leasehold property by the owner to himself and another after 1859 is good (22 & 23 Vict. c. 35, s. 21); and a conveyance of freehold property by the owner to himself and another after 1881 is good (Conveyancing Act, 1881, s. 50). Before those dates the effect of the assignment or conveyance was to pass the whole estate to "the other." These Acts do not authorise an assignment or conveyance by a person to himself alone (*Sweet's Concise Precedents*, 704). A party who takes the benefit of a deed is bound by it, though he does not execute it (*Webb v. Spicer*, 13 Q. B. 886; and see *Witham v. Vane*, 44 L. T. 718). See also "Voluntary Settlements," Part III., Chapter IV., *post*.

Aliens.

Since 1870 an alien has been able to buy, hold, and sell land in the same manner as a natural-born subject (33 Vict. c. 14, s. 2; 35 & 36 Vict. c. 39).

Appointment (Donee under Power of).

The donee of a general power of appointment has the same power of disposition as a tenant in fee simple, and can even appoint to himself or his wife (*Wood v. Wood*, L. R.,

10 Eq. 220); but the donee of a special power can only appoint in favour of the objects of the power (*Sugden on P.* 507), and can only create such an estate as would have been valid if inserted in the document creating the power; for each estate created by the appointment will be read into the deed creating the power, and be invalid or valid as it infringes or does not infringe the rule against perpetuities accordingly (*re Brown & Sibly's Contract*, 3 Ch. D. 156). There must also be some reference to the power or property, except in the case of a general power exercised by will (1 Vict. c. 26, s. 27; *re Williams*, *Foulkes v. Williams*, 42 Ch. D. 93; *Williams v. Mitchell* [1891], 3 Ch. 474; *in re Hardman's Trusts*, 31 L. R. Ir. 87). The words "and in exercise of every other power enabling me in this behalf" are not a sufficient reference, unless the special power previously recited (*in re Porter's Settlement*, *Porter v. De Quetteville*, 63 L. T. 431). But the exception does not hold where the deed requires the power to be referred to (*Phillips v. Cayley*, 43 Ch. D. 222; see also *re Brace* [1891], 2 Ch. 671). A power to appoint by deed is not duly exercised by will, and *vice versâ;* but a Court of Equity will, in certain cases, aid a defective execution of a power if the defect consists merely of the non-observance of some formality, but not if such formality be positively required by the legislature (*Dart*, 946).

An appointment which, by the terms of the power, can only take effect on a contingency, may, nevertheless, be made before the contingency happens (*Co. of Sutherland v. Northmore*, 1 Dick. 56); but where there is a contingency as to the person who is to exercise the power, an appointment by anticipation cannot be supported (*Doe v. Tomkinson*, 2 M. & S. 165; but see *Thomas v. Jones*, L. R., 32 Ch. 139). The old doctrines and rules, which invalidated any appointment under a power which excluded some of the objects of the

power, were abrogated by 37 & 38 Vict. c. 37 (*Sweet's Concise Precedents*, 92).

It must also be borne in mind that an appointment under a power cannot be revoked unless power to revoke be reserved to donee of power (*idem*).

A trustee in bankruptcy cannot exercise the bankrupt's general power of appointment after the bankrupt's death (*Nichols to Nixey*, 29 Ch. D. 1005).

A married woman adjudicated a bankrupt cannot be compelled to execute a deed exercising a power of appointment in favour of the trustee (*Ex parte Gilchrist*, 17 Q. B. D. 167, 521).

Any power (except the powers of a life tenant under the Settled Land Acts, 1882 to 1890) can now be disclaimed by deed (Conveyancing Act, 1892, s. 6). An infant can exercise a power of appointment if not coupled with an interest (*re D'Angibau*, 15 Ch. D. 228), and, by Section 1 of 18 & 19 Vict. c. 43, an infant can, with the sanction of the Court, in exercising a general power of appointment for the purpose of making a settlement on his marriage, make an absolute out-and-out appointment, so that on the failure of the limitations of the settlement, the appointed property will become his own. The appointment will stand even though he die under the age of twenty-one, except in the case of an infant tenant in tail (*in re Scott, Scott v. Hanbury* [1891], 1 Ch. 298). See also remarks under heading "Wills Generally," Part III., Chapter I., *post*.

Deeds made in exercise of a power must be attested, if the instrument creating the power so directs. Since August 13th, 1859, it has been sufficient if the deed is executed in the presence of and attested by two witnesses, notwithstanding that the instrument directs other formalities to be observed (22 & 23 Vict. c. 35, s. 12).

Attorney under Power of Attorney.

When purchasing from an attorney the purchaser should be satisfied that the power has not been revoked by the death of the person giving the power, or otherwise, unless the case is covered by Sections 8 and 9 of The Conveyancing Act, 1882, which provide that in the case of a power given after 1881, for value and expressed to be irrevocable, and also, whether given for value or not, if expressed to be irrevocable for a fixed time, not exceeding one year, evidence of non-revocation need not be asked for.

The execution of a power is an act of a personal nature, and cannot be delegated to other persons as trustees (3 *Prest.* 67). A trustee can execute a deed by an attorney, and can empower that attorney to receive trust money; and Section 17 of The Trustee Act, 1893, will protect a person in paying money to a person so authorised to act. But the power must be specially given, and must refer to the particular transaction. A *general* power of attorney authorising a person to execute deeds and transfer property, although given in the widest terms, is not sufficient (*re Hetling & Merton's Contract*, 69 L. T. 267; see also *Day v. Woolwich Equitable Building Society*, 60 L. T. 752).

By Section 40 of The Conveyancing Act, 1881, a married woman can now appoint an attorney, even though an infant; and by Section 46 of the same Act an attorney can now execute a deed in his own name.

Powers of attorney must be construed strictly, and it must be shown that, on a fair construction of the whole instrument, the authority in question is conferred in express terms, or by necessary implication (*Bryant, Powis & Bryant v. Bank du Temple*, 68 L. T. 546; see also *Hawksley v. Outram*, 66 L. T. 765). The purchaser should therefore ask for an abstract of the power, to see that the

execution of the deed was authorised by the power (*Danby v. Coutts*, 29 Ch. D. 500).

Bankrupts.

Under The Bankruptcy Act, 1869 (January, 1870, to December, 1883), a bankrupt's freeholds, copyholds, and leaseholds vested in the Registrar until a trustee was appointed, when they passed to him; and any estates vested in trustees after 1883 passed to the official receiver having jurisdiction. All bankruptcies under this Act became closed on the 31st December, 1887 (50 & 51 Vict. c. 66, s. 3).

Under the Act of 1883, a bankrupt's property vests, on adjudication (*Rhodes v. Dawson*, 16 Q. B. D. 548), in the official receiver until a trustee is appointed, when it passes to him; but a receiving order alone does not divest the debtor's property (*idem*).

An order for administration in bankruptcy of a deceased debtor's estate vests the estate in the official receiver (Section 125).

On annulment of bankruptcy property reverts back to the bankrupt (Section 35), unless the Court appoints some other person in whom it is to vest (*Metcalfe v. Metcalfe*, 65 L. T. 426).

A disclaimer by the trustee of leaseholds determines the interest of the bankrupt therein, but does not affect the rights of any other person; but the Court has power to vest the property in any person interested therein, and to exclude any mortgagee or sub-lessee declining to accept a vesting order (Section 55; *re Finley*, 21 Q. B. D. 475). The right under the Section extends to freeholds. Jessel, M. R., seemed to be of opinion that upon a disclaimer of freeholds the estate would vest in the Crown (*re Mercer & Moore*, 14 Ch. D. 287). A trustee cannot exercise the bankrupt's general power of appointment after the bankrupt's death

(*Nicols to Nixey*, 29 Ch. D. 1005); and a married woman adjudicated a bankrupt cannot be compelled to execute a deed exercising a power of appointment in favour of the trustee (*Ex parte Gilchrist*, 17 Q. B. D. 167, 521).

Where trustees were empowered to sell real estate with the consent of the tenant for life who was bankrupt, *Held*, That the concurrence of the trustee in bankruptcy was necessary to make a title (*in re Bedingfield and Herring*, 68 L. T. 634).

An undischarged bankrupt cannot, as against the trustee, convey real estate acquired after the bankruptcy even to a *bonâ fide* purchaser for value, and even though the trustee has not intervened (*in re New Land Development Association and Fagence*, 66 L. T. 694). The proposition laid down in *Cohen v. Mitchell* (25 Q. B. D. 262) was not intended to apply to real estate (*ibid.*).

A husband can effectually concur in his wife's acknowledged deed, although he is an undischarged bankrupt (*re Jakeman*, 23 Ch. D. 344), and bankruptcy does not divest him of estate held as trustee (Bankruptcy Act, 1883, s. 44). But the Court of Chancery can, if it thinks fit, whether he consents or not, remove him, appoint another in his place, and vest the property in such new trustee (Trustee Act, 1893, ss. 25, 26 and 32; *Rudall & Greig's Trustee Act, 1893*, 96, 102, and 116). As to the effect of bankruptcy on a voluntary settlement see "Settlements," Part III., Chapter IV., *post*.

Building Societies.

Registered under the 1836 Act (6 & 7 Will. IV. c. 32).—The purchaser should see that the statutory receipt is in the form given in the rules of the society, and that it is signed by the trustees named in the mortgage, or the survivors or survivor of them, or the trustees for the time being of the society (Section 5). He should therefore ask

for copy of the minutes showing the appointment of new trustees from the date of the mortgage deed.

Registered under the 1874 Act (37 & 38 Vict. c. 42).—The purchaser should see that the statutory receipt is in the form given in the Schedule to the Act, and that it is sealed with the society's seal, according to the formalities provided by the rules (Section 16), and countersigned by the secretary (Section 42). He should, therefore, ask for the production of the certificate of incorporation and rules.

Registered under The Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45).—This Act was repealed by The Industrial and Provident Societies Act, 1893, but the provisions as to statutory receipt are re-enacted by Section 43. The purchaser should see that the statutory receipt is under the hands of two members of the committee of the society, and countersigned by the secretary in the form contained in the Third Schedule to the 1893 Act, or in any other form specified by the rules of the society or any schedule thereto.

The effect of a statutory receipt under any of the above Acts is to vest the estate in the person best entitled to call for it, who is generally the person paying off the mortgage, and not, therefore, necessarily the next incumbrancer in point of time (*Sangster v. Cochrane*, 28 Ch. D. 298, and cases therein cited; and *Carlisle Banking Co. v. Thompson*, 28 Ch. D. 398).

The general orders, rules, and forms in the Chancery Division regulating the mode of proceeding under The Companies Acts, 1862 and 1867, apply to the winding up of a society registered under The Building Societies Act, 1874, and The Industrial and Provident Societies Act, 1876 (County Court Rules, 1889, Order 42). See also under heading "Companies," *post*, and *re Bowling & Wilby's Contract* (72 L. T. 18).

Building Societies are now prohibited from advancing money on a second mortgage (Building Societies Act, 1894, s. 13).

Where a society is wound up under a deed of dissolution, the estate does not pass to the liquidators without a conveyance.

It is very questionable whether the provisions as to statutory receipts apply at all after the commencement of the winding up of a society registered under the 1874 Act, though there does not seem to be any decision on the point. The Industrial and Provident Societies Act, 1893, specially provides for the liquidators, described as such, signing statutory receipts (Section 45).

Companies (Trading).

The purchaser should ask to see the Memorandum and Articles of Association of a joint stock company, to ascertain that they do not contain any clauses limiting its power of buying and selling (*re Patent File Co.*, L. R., 6 Ch. 83; *Jordan's Handy Book on Companies*, 18th ed. [1895], 97, 157), and also that the common seal has been affixed in accordance with the formalities therein directed.

Winding Up.—Neither an order for winding up a company by the Court, nor an order for winding up under its supervision, nor a voluntary winding up, divests the company of its property. The liquidator sells for the company, but its seal should still be used (25 & 26 Vict. c. 89, s. 95). All the liquidators should join in the deed (*re Ebsworth and Tidy*, 42 Ch. D. 23); and before 1891 the consent of the Court to the sale was required in the case of a winding up by the Court (53 & 54 Vict. c. 63).

See also under headings "Corporations" and "Railway Companies," *post.*

Convicts and Outlaws.

A conviction for treason or felony has not, since The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), caused forfeiture, but the convict is incapable of alienating so long as he has not completed his sentence or received pardon. Outlawry still causes a forfeiture to the Crown of the outlaw's property (*idem*), except outlawry in civil proceedings (42 & 43 Vict. c. 59, s. 3). Trust and mortgaged estates are not affected by the trustee becoming a convict (Trustee Act, 1893, s. 48). As to the power of the Court to appoint a new trustee in substitution for a convict trustee, and to make a vesting order on the appointment of such new trustee, see Trustee Act, 1893, ss. 25, 26, and 32; see also *Rudall & Greig's Trustee Act, 1893*, 96, 102, and 152.

Corporations.

Under The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), a municipal corporation has power (Section 105) to purchase land not exceeding five acres for certain specific purposes; and by Section 107, where a municipal corporation has not power to purchase or acquire land, a purchase may be effected with the approval of the Treasury. Under The Public Health Act, 1875, any local authority may (Section 175), for the purposes and subject to any provisions of the Act, purchase any lands, whether situated within or without their district (5 *Bythewood & Jarman*, 4th ed., 84, 85).

As to the question of "Mortmain" and the power of charities to purchase and hold land, see 4 *Bythewood & Jarman*, tit. "Mortmain." Grants by corporations must be by deed under their common seal, but the deed does not require delivery (*Co. Litt.*, 36 *a* [5]). But if the order for

affixing the seal be accompanied by a direction to the clerk to retain the deed until certain acts are done, the deed will not operate immediately (*Derby Canal Co. v. Wilmot*, 9 East. 360).

Curtesy (*Tenant by the*).

See "Married Women."

Devisee of Leaseholds.

If the devise is a recent one, the purchaser should ask that the executor should expressly assent to the bequest; but this may be dispensed with if the bequest is one under a will of long standing (2 *Davidson's Conveyancing*, Part 2, 1881 ed., 468). Generally, the allowing the life tenant to take the rents amounts to an assent to the bequest in remainder (*Stevenson v. Mayor of Liverpool*, 31 L. T. 673). But the assent will not be presumed merely from the fact that the executor made payments for the benefit of the legatee out of the rents of the leaseholds, which he received together with other moneys derived from the testator's estate, such payments not having been made specially out of or on account of the rents of the leaseholds (*Thorne v. Thorne*, 69 L. T. 378). A covenant in a lease not to assign or underlet without the lessor's consent will not prevent a bequest by will (*Doe d. Beavan*, 3 M. & S. 353).

Executors and Trustees.

See "Wills," Part III., Chapters I. to III., *post*.

Friendly Societies.

A friendly society may (if the rules thereof so provide) hold or purchase land in the names of the trustees, and may sell or mortgage the same. No purchaser or mortgagee

shall be bound to inquire as to the authority for any such sale or mortgage, and the receipt of the trustees shall be a good discharge (Friendly Societies Act, 1875, s. 16, s.s. 2). But a benevolent society must not hold land exceeding one acre in extent at any one time (*idem*).

Upon the death, resignation, or removal of a trustee the property vested in such trustee vests in the succeeding trustees, either solely or together with any surviving or continuing trustees, and, until the appointment of succeeding trustees, in such surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, as personal estate (whether the same be real or personal), subject to the same trusts, without conveyance or assignment (Sub-section 4). The trustees may act as such before the resolution as to their appointment has been sent to the Registrar under Section 14, Sub-section *b* (*Beckett v. Willett*, 5 W. R. 622). Where a change of trustees appears on the title, the purchaser should ask for production of the book containing the minute of the appointment of the new trustees, and the receipt of the Registrar of Friendly Societies for the notice of appointment sent to him.

On payment off of a mortgage, a receipt under the hands of the trustees, countersigned by the secretary, in the form contained in the Schedule to the Act, or in any form specified by the rules of the society or any schedule thereto, for all moneys secured to the society by any mortgage or other assurance, such receipt being endorsed upon or annexed to such mortgage or other assurance, vacates the same, and vests the property therein comprised in the person entitled to the equity of redemption of the same, without re-conveyance or re-surrender (Section 16, Sub-section 7). As to the effect of a statutory receipt see *ante*, under title "Building Societies;" also *Fourth City Mutual Building Society v. Williams* (L. R., 14 Ch. D. 140),

Sangster v. Cochrane (28 Ch. D. 298), and *Carlisle Banking Co. v. Thompson* (28 Ch. D. 398).

Heirs-at-Law and Co-Heiresses.

The purchaser should ask for a statutory declaration, with certificates of marriages, births, and deaths, and identification. If letters of administration were not taken out to deceased's estate, he should also ask for a declaration that the deceased has not made a will. If the property is in Yorkshire an affidavit of intestacy should be registered at the Registry of Deeds (Yorkshire Registries Act, 1884, Section 12). See also Part III., Chapter I.

The purchaser should also particularly bear in mind that the descent is traced, *not* from the last person seized, but from the last person seized who did not inherit (3 & 4 Will. IV. c. 106, ss. 1 and 2).

An heir-at-law cannot disclaim (*Williams' Real Property*, 17th ed. [1892], p. 81).

Co-heiresses hold in coparcenary, and each can dispose of her share by deed or will. If one daughter should die in the lifetime of her father, her issue, if any, take, by representation, the share which she would have taken if she had survived her father (*Challis's Real Property*, 1892 ed., 342). On intestacy there is no right of survivorship, but each part descends to the respective issue by right of representation, but according to the ordinary canons of descent (*Williams' Real Property*, Appendix, 599 to 612; *Cooper v. France*, 14 Jur. 214). An estate in coparcenary is dissolved by the alienation of one parcener, and changes the estate into a tenancy in common (2 *Cruise T.* 19, paragraphs 11, 33).

If a person dies without an heir and intestate, there is an escheat (Intestates Act, 1884, s. 4); also where a person

leaves a will (if there is no heir) if the trusts are incapable of being executed (Section 7).

Infants.

An infant has no power of disposition by will, but his conveyance is only voidable; and if it is for his benefit he can either avoid or ratify the same on attaining his majority (*Burnaby v. Equitable &c. Society*, 28 Ch. D. 416; *Carter v. Silber*, 66 L. T. 473, affirmed on appeal under the name of *Edwards v. Carter*, 69 L. T. 153). But such conveyance becomes binding if not repudiated within a reasonable time after his attaining his majority (*idem; in re Jones, Farrington v. Forrester*, 69 L. T. 45). If the infant die, however, while the instrument is still voidable, his heir may elect to repudiate it (*Williams' Real Property*, 271). The Infants' Relief Act, 1874, does not say that the conveyance of the parcels is void, but only the contract. Where an infant executed mortgages, Romer, J., held that, as the contracts therein contained for repayment of money not lent for his benefit would be void, the assurance of his estate to secure such money would also be void, as it could not be for his benefit to have the assurance enforced to secure void covenants (*in re Foulkes, Foulkes v. Hughes*, 69 L. T. 183). An infant can exercise a power if not coupled with an interest (*re d'Angibau*, 15 Ch. D. 228). With the sanction of the Court he can also make a valid conveyance for payment of his debts (1 Will. IV. c. 47), and a valid settlement on marriage (18 & 19 Vict. c. 43). Section 1 enables an infant, in exercising a general power of appointment for the purpose of making a settlement upon his marriage, to make an absolute out-and-out appointment, so that on the failure of the limitations of the settlement the appointed property will become his own.

The appointment will stand even though he die under the age of twenty-one, except in the case of an infant tenant in tail (*in re Scott, Scott v. Hanbury* [1891], 1 Ch. 298). A marriage settlement made by an infant without the leave of the Court is not void, but only voidable; and if it is for the benefit of the infant, like any other conveyance by an infant, it becomes binding if not repudiated within a reasonable time of the infant attaining majority (*Edwards v. Carter, ante; Farrington v. Forrester, ante; Duncan v. Dixon*, L. R., 44 Ch. D. 211), and, if the infant is a married woman, it seems, without acknowledgment (*re Hodson, Williams v. Knight*, 71 L. T. 77).

The editors of *Law Notes* raise a doubt as to whether the effect of the provisions of The Settled Land Act, 1882, is to take away the power of an infant to convey his lands of gavelkind tenure by feoffment under the custom of gavelkind (*Law Notes*, March and December, 1894).

By Sections 59 and 60 of The Settled Land Act, 1882, where an infant is absolutely entitled to property, the trustees of the settlement may sell (see *re Duke of Newcastle's Estate*, 24 Ch. D. 129; *re Countess of Dudley's Contract*, 35 Ch. D. 338); and if there are no trustees, the infant's guardian or next friend may apply to the Court to appoint a person to do so (see *re Wells*, 48 L. T. 859).

See also under heading "Life Tenant," *post*.

As to when an infant's guardian can sell his land under The Settled Estates Act, 1877, see Section 41 of The Conveyancing Act, 1881; also *re Liddell* (52 L. J., Ch. 207).

Special powers are given by The Lands Clauses Consolidation Act, 1845, enabling infants to sell land to the promoters of an undertaking authorised by any special Act in which the principal Act is incorporated. The infant has no power to fix a price, which must be settled by arbitration or valuation (Section 9).

A power of attorney given by an infant, except a married woman infant (Conveyancing Act, 1881, s. 40), is absolutely void (8 Co. 45 *a*).

A Court of Equity will protect a purchaser who has been induced to deal with an infant by his express misrepresentation that he was of full age (*Ex parte Jones*, 18 Ch. D. 109), unless the purchaser was aware of the fraud being practised on him (*Inman v. Inman*, L. R., 15 Eq. 260).

As to passing property vested in an infant, trustee, or mortgagee by a vesting order see Trustee Act, 1893, ss. 26 and 28 (*Rudall & Greig's Trustee Act, 1893*, 102 and 108).

Joint Tenants.

A conveyance by a joint tenant (2 *Prest.* 58), and, in Equity, a contract for the sale of his share to a stranger, will sever the tenancy (*Kingsford v. Ball*, 2 Giff. Ap. 1); so a lease for years by one joint tenant severs the tenancy if the property is leasehold (but see *in re Wilks, Child v. Bulmer* [1891], 3 Ch. 59), but not if it is freehold (2 *Prest.* 58 to 60). The act of a joint tenant to amount to a severance must be such as to preclude him from claiming by survivorship any interest in the subject matter of the joint tenancy (*in re Wilks, Child v. Bulmer, ante*). A conveyance, therefore, from one joint tenant to another is always more satisfactory than a release, as the latter would not be sufficient to transfer the estate if the joint tenancy had previously been severed, though, theoretically speaking, where there has been no severance a release is the correct form of document, as the whole estate is already supposed to be vested in each joint tenant.

If there are three or more joint tenants, and one of them severs the joint tenancy, the remaining share will still be held in joint tenancy (2 *Prest.* 60). On the death of the

tenant while the joint tenancy continues the estate will devolve on the survivor (2 *Prest.* 66); but in the case of property conveyed to partners as joint tenants, the surviving partner must account for the share of the deceased partner (*Dart's Vendors and Purchasers*, 94; Partnership Act, 1890, s. 20, s.s. 2). If land be conveyed to purchasers, not otherwise in partnership, as joint tenants, but for the purpose of a joint speculation, there is no survivorship in Equity (*Darby v. Darby*, 3 D. 495; Partnership Act, 1890, s. 20, s.s. 3). Where the purchase is made by several persons and paid for by them in unequal shares, they become tenants in common in Equity, although the legal limitations be to them as joint tenants (*Lake v. Craddock*, 3 P. Wms. 158).

After 1883 a grant to a husband and wife creates a joint tenancy, but before that date a tenancy by entireties, the consequence of which was that if a limitation was made to a husband, wife, and a stranger, the husband and wife took one moiety only, and the other person the remaining moiety (*re March*, 27 Ch. D. 166; *re Jupp*, 39 Ch. D. 148).

Where land was conveyed to a husband and wife before The Married Women's Property Act, 1882, in such a way as, if they were not married, it would constitute them joint tenants, a decree absolute for divorce made their holding a joint tenancy (*Thornley v. Thornley*, 68 L. T. 199).

One of several joint tenants can compel a sale by a partition suit (31 & 32 Vict. c. 40, ss. 3, 4, 5, and 7, amended by 39 & 40 Vict. c. 17; *Beckett v. Sutton*, 19 Ch. D. 646).

As to joint account clause in mortgages see "Mortgagees" and "Habendum (Words of Limitation)," *post.*

Life Tenant under The Settled Land Acts, 1882 to 1890.

If the land is not subject to a trust for sale (Settled Land Act, 1884, s. 7), a life tenant in possession may

sell settled land, and can pass the legal estate, subject of course to prior estates, although he has himself only an equitable estate (Settled Land Act, 1882, ss. 2, 3, 20, and 50), but not the principal mansion house and land occupied therewith, without the consent of the trustees of the settlement or of the Court (Section 15). A house usually occupied as a farmhouse, the site and lands attached to which do not exceed twenty-five acres in extent, is not to be deemed a principal mansion house (Settled Land Act, 1890, s. 10). If the land is subject to a trust for sale, a life tenant cannot sell without the consent of the Court (Settled Land Act, 1884, s. 7). One month's notice must be given to the trustees of the settlement previous to sale (Section 45). If there are no trustees the Court can appoint them (Section 38; *re Harrop's Trusts*, 24 Ch. D. 717). All the provisions of The Trustee Act, 1893, as to appointment of new trustees are to apply to trustees for purposes of The Settled Land Acts, 1882 to 1890 (Trustee Act, 1893, s. 47; *Rudall & Greig's Trustee Act, 1893*, 151). The notice required to be given by Section 45 (*ante*) of intention to sell may be a notice of a general intention in that behalf (Settled Land Act, 1884, s. 5). The trustees may also by writing under their hand accept less than a month's notice or waive altogether a notice being given (Settled Land Act, 1884, s. 5, s.s. 3). A purchaser dealing in good faith is to assume that the provisions of the Act have been complied with (Section 54; *Duke of Marlborough v. Sartoris*, 32 Ch. D. 616). The fact of there being no trustees is not a defect in title, and does not affect a purchaser dealing in good faith, notwithstanding that he may have constructive notice of the facts (*Mogridge v. Clapp*, 66 L. T. 558).

A sale of land may be made with or without an exception or reservation of mines or minerals (Section 17).

Any attempt to prohibit or limit the power of a tenant for life to sell will be void (Settled Land Act, 1882, ss. 50 and 52; *re Chaytor*, 25 Ch. D. 651; *re Paget*, 30 Ch. D. 161; *re Atkinson*, 31 Ch. D. 577; *re Ames*, *Ames v. Ames*, 62 L. J., Ch. 685). The power to sell is not suspended during an administration action (*Cardigan v. Curzon-Howe*, 30 Ch. D. 531).

The purchase money has to be paid to the trustees or into Court at the option of the life tenant (Settled Land Act, 1882, ss. 22 and 39; see *re Orme and Hargreaves*, 25 Ch. D. 595). As to who are trustees see Section 16 of The Settled Land Act, 1890.

A tenant for life can purchase part of the estate. But The Settled Land Act, 1890, provides that in such a case the trustees of the settlement shall stand in the place of and represent the tenant for life (Section 12).

The powers given by The Settled Land Act, 1882, to a tenant for life to pass the legal estate will generally entitle him to the custody of the title deeds (*West v. Wythes*, 68 L. T. 520). As to the general principle to be adopted in construing the Act see *re Duke of Newcastle's Settled Estates* (24 Ch. D. 129).

As to infants see "Infants," *ante*, p. 24; as to "Married Women" and "Tenants in Tail" see *post*, under respective headings; and as to gifts over on alienation see "Wills, Generally," Part III., Chapter I., *post*.

Married Women, &c.

The purchaser should consider whether the deed requires acknowledgment.

There are four cases to consider—

(*a*) Property under the Act of 1882 unrestrained from anticipation;

(*b*) Separate property not under that Act unrestrained from anticipation;

(*c*) Property not separate estate; and

(*d*) Miscellaneous cases.

(*a*) In this case the married woman can pass the whole legal and beneficial estate without acknowledgment (Married Women's Property Act, 1882, ss. 1, 2, 5, and 19; *re Drummond and Davie* [1891], 1 Ch. 524).

(*b*) In this case she cannot pass the legal estate without the concurrence of her husband, and, in the case of freeholds, without an acknowledged deed (*Johnson v. Johnson*, 35 Ch. D. 345). She can, however, pass the beneficial interest by an unacknowledged deed: therefore, where the legal estate is in trustees, they and the married woman together can make a good title, without the husband or acknowledgment (*Taylor v. Meads*, 4 De G. J. & S. 604).

(*c*) In this case the purchaser has to consider whether the property is freehold, copyhold, or leasehold.

In the case of freeholds, she cannot pass *either* the legal or equitable estate without her husband's concurrence and an acknowledged deed (*Taylor v. Meads*, *ante*), except where she is selling under a power (3 & 4 Will. IV. c. 74, s. 78), or where she has, under Section 91 of the Fines and Recoveries Act, obtained an order dispensing with the husband's concurrence (*Goodchild v. Dougall*, 3 Ch. D. 650).

In the case of copyholds, she cannot pass the legal estate except by surrender with the concurrence of her husband, she having been separately examined (3 & 4 Will. IV. c. 74, s. 77).

In the case of leaseholds see "Husband's Power over Wife's Property," *post*, p. 36. As to her reversionary interests in leaseholds between 1857 and 1883, she could make a good assignment with the consent of her husband and an

acknowledged deed (Malins' Act, 20 & 21 Vict. c 57; *Reid v. Reid*, 54 L. T. 100).

(*d*) She cannot bar her *estate tail* without acknowledgment and her husband's concurrence (3 & 4 Will. IV. c. 74, s. 40).

She can, and always could, exercise a *power* by an unacknowledged deed without her husband's concurrence (3 & 4 Will. IV. c. 74, s. 78; *re Butler*, 3 Ir. R. Eq. 138).

Since August, 1874, a *bare trustee* (being a married woman) could convey by deed without acknowledgment or husband's concurrence (Vendors and Purchasers Act, 1874, s. 6, now repealed and re-enacted by The Trustee Act, 1893, s. 16; *Rudall & Greig's Trustee Act, 1893*, 74).

A husband is not precluded by his *bankruptcy* from concurring with his wife in an acknowledged deed (*in re Jakeman's Trusts*, 23 Ch. D. 344).

A *disclaimer* by a married woman must be made with her husband's concurrence and an acknowledged deed (8 & 9 Vict. c. 106).

It appears that a married woman can confirm a voidable settlement made on her marriage when she was an infant without acknowledgment (*re Hodson*, *Williams v. Knight*, 71 L. T. 77). Strictly speaking, a married woman (with the concurrence of her husband) may make an equal partition without acknowledgment; but a partition by her, if unequal, is voidable by the wife or her heirs after her husband's death (6 *Bythewood & Jarman*, 590).

The husband's rights depend on the marriage contract, and divorce puts an end to those rights (*Wilkinson v. Gibson*, L. R., 4 Eq. 162). Judicial separation and also a protection order make the wife a *feme sole* as to after-acquired property (20 & 21 Vict. c. 85, s. 25; 21 & 22 Vict. c. 108, s. 8; and 41 Vict. c. 19, s. 4). Therefore in these cases acknowledgment would not be necessary.

After considerable conflict of judicial opinion, it is now finally decided that the words in Section 5 of The Married Women's Property Act, 1882, entitling a woman married before its commencement to dispose of property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of the Act, do not operate retrospectively, so as to change the nature of a married woman's title which has partially accrued before such commencement—*e.g.*, a remainder, which after such commencement becomes an estate in possession; but that the title to the whole interest, whatever that may be, must accrue after the 31st December, 1882 (*Dart*, 652; *Reid v. Reid*, 31 Ch. D. 402; see also *re Davenport*, *Turner v. King*, 71 L. T. 875). And, therefore, whether the document requires acknowledgment or not will depend under which of the above headings the estate comes.

Evidence of Acknowledgment.—Where the deed was executed before 1883 an office copy certificate of acknowledgment should be asked for (3 & 4 Will. IV. c. 74, s. 88). After that date the certificate on the deed is sufficient *evidence* of acknowledgment (Conveyancing Act, 1881, s. 2).

Restraint on Anticipation.—The purchaser should see that the property is not subject to any will or settlement restraining the married woman from anticipating her interest.

A restraint on anticipation has no effect unless the property is expressed to be separate estate (*Stogdon v. Lee*, [1891], 1 Q. B. 661; dictum in *Baggett v. Meux*, 1 Coll. 138, approved).

A restraint on anticipation will not prevent a married woman from exercising the powers of a life tenant under The Settled Land Act, 1882, s. 61.

Husband and Wife Conveying to Each Other.—After 1881 good as to freeholds (Conveyancing Act, 1881, s. 50), but void before, unless a trustee or grantee to uses interposed.

After 1882 good as to leaseholds (Married Women's Property Act, 1882, s. 1), but void before, unless a trustee interposed (*Fox v. Hawkes*, 13 Ch. D. 822).

The Court would, however, strive to construe the deed as a declaration of trust by the husband in favour of the wife (*idem*).

Where a husband has property transferred into the name of his wife, the presumption is that the husband intends it as an advancement by him, and the presumption also is that there is no resulting trust as between the wife and the husband (*Thornley v. Thornley*, 68 L. T. 199).

Conveyance to Husband and Wife.—After 1883 a grant to a husband and wife creates a joint tenancy, but before that date a tenancy by entireties, the consequence of which was that if a limitation was made to a husband, wife, and a stranger, the husband and wife took one moiety only, and the other person the other moiety (*re March*, 27 Ch. D. 166; *re Jupp*, 39 Ch. D. 148).

Where land was conveyed to husband and wife before The Married Women's Property Act, 1882, in such a way as, if they were not married, it would constitute them joint tenants, a decree absolute for divorce makes their holding a joint tenancy (*Thornley v. Thornley*, 68 L. T. 199).

Bankrupt.—A married woman adjudicated a bankrupt cannot be compelled to execute a deed exercising a power of appointment in favour of the trustee (*Ex parte Gilchrist*, 17 Q. B. D. 167, 521).

Dower.—Notice whether on the death of an owner in fee *or* in tail intestate, the widow's claim to dower has been barred.

The widow's right to dower is barred when—

(*a*) The owner has disposed of the property by deed or will (3 & 4 Will. IV. c. 105, ss. 4 and 5); or

(*b*) He has inserted a clause barring dower in deed or will (Sections 6 and 7); or

(*c*) He has devised real estate to his widow (Section 9); but a gift of land not subject to dower will not prejudice her right (Section 10); or

(*d*) There has been a divorce, even though it has been granted on the ground of the husband's misconduct (*Frampton v. Stephens*, 21 Ch. D. 164).

After dower has attached, if the widow concurs in a mortgage with the heir, the mortgage as to her interest is a mere personal contract, which, on repayment, does not deprive her of her dower (*Meek v. Chamberlain*, 8 Q. B. D. 31). The widow (unlike a widower tenant by the curtesy) is not entitled to exercise the powers of a life tenant under The Settled Land Act, 1882.

If a vendor selling under a deed containing uses to bar dower does not exercise his power in selling, a technically complete conveyance cannot be obtained without the concurrence of the dower trustee. But as this is a theoretical and not a practical blot on the title, the Court would not assist a purchaser raising the point (*re Heaysman & Tweedy's Contract*, 69 L. T. 89).

Power of Making a Will.—A married woman can dispose by will of the legal and equitable estate in her freehold property, if separate property, under The Married Women's Property Act, 1882, s. 1; but she cannot pass the legal estate in her other separate property, although such legal estate is vested in her (*Hall v. Waterhouse*, 6 N. R. 20). She can, however, dispose of her equitable estate which she holds for her separate use (*Taylor v.*

Meads, *ante*). As to leaseholds, she can dispose of them, although not held for her separate use, provided her husband gives his consent to her doing so by some specified will (*R. v. Bettesworth*, Str. 891), and does not revoke his consent during the coverture (see *Noble v. Willcock*, 7 L. R., H. L. 580), and, if he survives her, either expressly repeats his assent (*Maas v. Sheffield*, 1 Rob. 364), or does not revoke it before her will is proved. See also "Wills, Generally," Part III., Chapter I., *post*.

The Married Women's Property Act, 1893, provides that the will of a married woman shall speak from the death, although she had no separate property at the time of making it, and such will shall not require to be re-executed after the death of her husband (Section 3).

Devolution on Intestacy; also Curtesy.—On her death intestate her leaseholds (including separate estate) vest in her husband in his marital rights without letters of administration (1 *Prest.* 343; *re Bellamy*, *Elder v. Pearson*, 25 Ch. D. 620); but her freeholds and copyholds (including separate estate) descend to her heir, subject to right of husband as tenant by the curtesy (*Eager v. Furnivall*, 17 Ch. D. 115).

On the death of a married woman who has been judicially separated from her husband, or who has obtained the benefit of a protection order, intestate, her property devolves as if her husband were dead (20 & 21 Vict. c. 85, s. 25; 41 Vict. c. 19, s. 4).

There are four requisites to the existence of an estate by the curtesy—(1) marriage; (2) seizin (in possession, unless such possession cannot possibly be obtained) of the wife for an estate of inheritance; (3) issue born alive in the wife's lifetime and capable of inheriting; and (4) the death of the wife (*Co. Litt.* 29 *a*, *b*). Mr. Challis raises a doubt as to whether there is curtesy of lands coming to

the wife other than by purchase, on the ground of Littleton's statement quoted by Coke (*Co. Litt.* 40 *a*) that the issue must be heir to the wife, descent being traced before the Descent Act from the person last seized (*Challis's Real Property*, 315). A husband is also entitled to curtesy of his wife's equitable estates in fee (including those held by her for her separate use) if she dies possessed thereof and intestate (*Eager v. Furnivall*, 17 Ch. D. 115; *Cooper v. MacDonald*, 7 Ch. D. 288, overruling *Moore & Webster*, L. R., 3 Eq. 267), but not if she has disposed of them in her lifetime or by will (*Cooper v. MacDonald*, above). An express declaration in a settlement that the husband should not be entitled to curtesy was held to exclude his right (*Bennet v. Davis*, 2 P. Wms. 316). But it does not appear that a wife could, by a mere declaration of intention without a disposition, defeat his right (*Challis's Real Property*, 316).

The Married Women's Property Act, 1882, has not affected this right of the husband (*Hope v. Hope*, 66 L. T. 522). A tenant by the curtesy seems to have statutory powers of a life tenant under The Settled Land Act, 1882 (see s. 58 (1), s.s. 8; also Settled Land Act, 1884, s. 8).

Husband's Power Over his Wife's Property other than her Separate Property.

The husband can dispose of his wife's freehold estates without her concurrence, but not for an interest to endure longer than his own interest—namely, for the joint lives of himself and his wife—and, if he survive her, for his life interest as tenant by the curtesy (*Robertson v. Norris*, 11 Q. B. D. 16). As to leaseholds, he can assign her legal terms of years without her concurrence (*Hill v. Edmonds*, 5 De Gex & S. 603, 607). He can also assign her equitable terms of years, but not so as to defeat her equity to a settlement

(*Boxall v. Boxall*, 27 Ch. D. 220). It is observable, however, that if the wife have the possibility of a term which cannot by any means vest in the husband during coverture, the husband's disposition will not affect her (1 *Prest.* 343). If she survive him, all her real and leasehold property not disposed of belongs to her: therefore a devise by the husband of his wife's property would not be good if the wife survived him (1 *Prest.* 343; *Williams' Real Property*, 482); and divorce puts an end to the husband's rights, which depend on the marriage contract (*Wilkinson v. Gibson*, L. R., 4 Eq. 162). Judicial separation and a protection order make the wife a *feme sole* in respect of after-acquired property (20 & 21 Vict. c. 85, s. 25; 21 & 22 Vict. c. 108, s. 8; and 41 Vict. c. 19, s. 4).

Any property of a woman married after The Married Women's Property Act, 1882, which would have been bound, apart from the Act, by an assignment of the husband alone in a settlement, is still bound by such assignment under Section 19, notwithstanding Section 2, which makes the property of a woman married after the Act her separate property (*Hancock v. Hancock*, 38 Ch. D. 78; applied and followed in *Stevens v. Trevor-Garrick*, 69 L. T. 11). When a married woman is entitled to life interest in land not for her separate use, she and her husband together can exercise the powers of tenant for life under The Settled Land Act, 1882, s. 61, even though the married woman be, by the terms of the settlement, restrained from anticipation (*idem*). See also "Curtesy" above.

Miscellaneous.—An infant married woman can, with the sanction of the Court, make a valid settlement on marriage (18 & 19 Vict. c. 43). Section 1 enables an infant, in exercising a general power of appointment for the purpose of making a settlement upon marriage, to make an out-and-out appointment, so that on the failure of limitations

of the settlement the appointed property will become the infant's own; and the appointment will stand even though the infant die under the age of twenty-one, except in the case of an infant tenant in tail (*in re Scott, Scott v. Hanbury* [1891], 1 Ch. 298). But a marriage settlement made by an infant without the leave of the Court is not void, but only voidable; and if it is for the benefit of the infant, it becomes binding if not repudiated within a reasonable time of the infant attaining majority (*Edwards v. Carter*, 69 L. T. 153; *in re Jones, Farrington v. Forrester*, 69 L. T. 45; *Duncan v. Dixon*, L. R., 44 Ch. D. 211); and, if the infant is a married woman, it seems, without acknowledgment (*re Hodson, Williams v. Knight*, 71 L. T. 77). Where property is purchased by and conveyed to a wife, it is a commendable practice to join the husband, to get his admission that the purchase money belongs to his wife for her separate use.

A married woman can now, even though an infant, appoint an attorney (Conveyancing Act, 1881, s. 40). She could not do so before this Act enabled her to do so (*Kenrick v. Wood*, L. R., 9 Eq. 333).

Under The Intestates' Estates Act, 1890, a widow may acquire a further interest in her husband's frechold estates, besides her dower and her one-third of personalty, if he die intestate after the 1st April, 1890, leaving no issue. The Act does not apply to a partial intestacy (*re Twigg's Estate*, 66 L. T. 604).

Copyholds, as affecting a married woman.—See "Copyholds," *post*.

See also "Devolution on Intestacy," *ante*.

Next-of-Kin.

Although leaseholds on intestacy pass to an administrator on administration being granted, the next-of-kin do not acquire the estate without an assignment (*Burton*, 311).

Mortgagees.

A mortgagee cannot buy from himself, nor can the secretary of a building society buy from the society (*Martinson v. Clowes*, 21 Ch. D. 857), nor can an agent appointed to sell or to collect the rents buy from a mortgagee (*Guest v. Smythe*, 5 Ch. 551).

But there is nothing to prevent a second mortgagee from purchasing from the first mortgagee under his power of sale (*Kirkwood v. Thompson*, 2 D. J. & S. 613; *Shaw v. Bunny*, 2 D. J. & S. 468). A sale by a mortgagor to a mortgagee is to be regarded in the same way as a sale between parties having no connection with each other (*Knight v. Majoribanks*, 2 McN. & G. 10; *Melbourne Bank v. Brougham*, 7 App. Ca. 307), unless the mortgagor being in embarrassed circumstances, the mortgagee exercises coercion (*Ford v. Olden*, 3 Eq. 461).

A purchaser from a mortgagee under his power of sale is not entitled to the benefit of Section 21 of The Conveyancing Act, 1881, exempting him from enquiry as to whether a case has arisen for the exercise of the power of sale, unless the conveyance is made "in professed exercise of the power of sale conferred by this Act." Where the sale is so expressed to be made, the purchaser need not inquire if there is any irregularity, even though the slightest inquiry would have disclosed such irregularity (*Bailey v. Barnes*, 69 L. T. 543). But the purchaser will not be protected if he has notice of an irregularity which could not have been waived. *Quære* (*per* Bowen, L. J.) whether the same rule would apply where the irregularity was one which might have been waived (*Selwyn v. Garfit*, 38 Ch. D. 272). A purchaser buying under a power of sale should see that the mortgagor had power to mortgage the property, and therefore to give the power of sale. A mortgage by an executor to a building society may be a valid security for

the principal moneys actually advanced, with interest at a reasonable rate (*Cruikshank v. Duffin*, L. R., 13 Eq. 555; followed, *Thorne v. Thorne*, 69 L. T. 378).

A transferee of a mortgage cannot exercise power of sale unless "assigns" be mentioned in the power; and the statutory form of transfer cannot be used to transfer an ordinary mortgage, but only to transfer a statutory mortgage.

An equitable mortgagee, by deposit of title deeds, is not entitled to six months' notice on calling in the money, but only to a reasonable time to enable him to look up the deeds (*Fitzgerald's Trustee v. Mellersh*, 66 L. T. 178). An equitable charge upon the property may be created by an instrument in writing which shows that the intention of the parties is that a security shall be created, although it contains no words of charge (*Cradock v. Scottish Provident Institution*, 69 L. T. 380). An equitable mortgagee can sell his interest, but cannot pass the legal estate without the help of the Court (*re Hodgson & Howe*, 35 Ch. D. 668; but see *re Solomon & Meagher*, 40 Ch. D. 508).

A purchaser of an equity of redemption should ask for the concurrence of the mortgagee, as being first evidence that he will not ask, as a condition of reconveyance, the payment off of the mortgage on another estate, where not within Section 17 of The Conveyancing Act, 1881 (*Dart*, 654). See as to consolidation of mortgages *Fisher on Mortgages*, par. 1033 *et seq.*; also *Minter v. Carr* (71 L. T. 527), and *Pledge v. Carr* (71 L. T. 598).

In a mortgage to persons as joint tenants before 1882, see that the mortgage deed contains a joint account clause: otherwise the survivor cannot give a good receipt (*Morley v. Bird*, 3 Ves. 631; *Steeds v. Steeds*, 22 Q. B. D. 537); but he can convey the estate. Since 1881 a power is, of course, implied for the survivor to give a receipt (Conveyancing Act, 1881, s. 61).

As to devolution of mortgaged estates of inheritance on death—

Before 1882.—Mortgaged estates of inheritance passed under the will of the mortgagee. A general devise would pass them unless an intention could be gathered from the will that the devise was intended to be confined to beneficial interests. It is important to see that "assigns" is mentioned in the mortgage, otherwise the devisee could not execute the power of sale (*re Morton and Hallett*, 15 Ch. D. 143).

Mortgaged estates not disposed of by will descended like beneficial interests to the heir; and here again it should be seen that the "heir" was mentioned in the mortgage to enable him to exercise the power of sale.

But the estate vested in a mortgagee dying between August, 1874, and December, 1881, could be passed by his personal representatives by virtue of Section 4 of The Vendors and Purchasers Act, 1874. He could, however, only *reconvey:* that is, he could not exercise the power of sale, or even transfer the mortgage (*re White*, 29 W. R. 820; *re Spradberry*, 14 Ch. D. 514).

After 1881.—Mortgaged estates of inheritance after this date vested in a *sole* mortgagee now pass to the personal representative, notwithstanding a devise (Conveyancing Act, 1881, s. 30). But if there is *no* personal representative, see "Devolution of Estates on Death," Part III., Chapter II., *post*. This rule also applied to copyholds from 1882 to September, 1887. After the latter date they pass to the devisee or heir (Copyhold Act, 1887, s. 45; *re Wills*, 37 Ch. D. 312).

Infants' mortgaged estates cannot be passed, except by a vesting order (Trustee Act, 1893, s. 28; *Rudall & Greig's Trustee Act, 1893*, 108).

The purchaser is entitled to have incumbrances discharged out of the purchase money (*re Jackson & Oakshott*, 14 Ch. D. 851; but see *re Great Northern Railway Co. v.*

Sanderson, 25 Ch. D. 788). When incumbrancers are unable or unwilling to concur see powers given by Section 5 of The Conveyancing Act, 1881, of paying money into Court and obtaining a vesting order.

An attornment clause with power of distress in a mortgage deed is void, as it is a bill of sale as to any chattels seized, and cannot be registered, as it is not in the form contained in The Bills of Sale Act, 1882 (*Green v. Marsh*, 66 L. T. 480).

To bring a case within the exception contained in Section 6 of The Bills of Sale Act, 1878, it is necessary that the mortgagee should first take possession of the premises, and should then demise them to the mortgagor, the case intended to be excepted being that of a *bonâ fide* lease by a mortgagee in possession to a mortgagor, and not a lease to secure money (*re Willis, ex parte Kennedy*, 59 L. T. 749).

As to fixtures passing under mortgage see "Parcels, Fixtures," *post*.

Where trustees were empowered to sell freeholds with the consent of a tenant for life who had encumbered his life estate. *Held*, That the concurrence of the mortgagees was necessary to make a good title (*in re Bedingfield and Herring*, 68 L. T. 634).

Upon the payment of money secured by mortgage of an equitable estate, or by the creation of a term out of freehold property, the mortgaged property reverts at once to the mortgagor. In these cases, therefore, strictly speaking, a reconveyance is superfluous for the purpose of retransferring the estate (*Sweet's Concise Precedents: Reconveyances*). As to presuming a reconveyance, after the mortgagor has long dealt with the property as his own, see *Cooke v. Soltan* (2 S. & S. 154); *Bennett v. Cooper* (9 Beav. 252). But the circumstances must be strongly in favour of the presumption, or it will not be made (*Sweet's*

Concise Precedents: Reconveyances; Pickett v. Packham, L. R., 4 Ch. 190).

See also heading "Building Societies," *ante*.

The trustee in bankruptcy of a mortgagor may disclaim the property, and the Court has power to vest the property in any person interested therein, and to exclude any mortgagee declining to accept a vesting order (Bankruptcy Act, 1883, s. 5; *re Finley*, 21 Q. B. D. 475).

Railway Companies.

The power of a railway company to alienate land is acquired under the provisions of The Lands Clauses Consolidation Act, 1845. The provisions of the Act deal with three kinds of property—

1. Land acquired for the special purposes of the undertaking;
2. Land taken for extraordinary purposes under Section 45; and
3. Superfluous Land within Section 127.

As to 1, a company cannot alienate the land for any purposes outside its special Act (*Foster v. London, Chatham & Dover Railway Co.*, 71 L. T. 855, and cases there cited).

As to 2, there seems to be no restriction to the power of the company to sell (Section 13; see also *City of Glasgow Railway Co. v. Caledonian Railway Co.*, L. R., 2 H. L. 160).

As to 3, the sale must take place within ten years of the time fixed for the completion of the works, unless a special time is mentioned in the company's special Act: otherwise the land vests in the adjoining owners (Section 127; *Great Western Railway Co. v. May*, 31 L. T. 137).

As to what is superfluous land see *Metropolitan Railway Co. v. Cosh* (13 Ch. D. 607). The company must sell absolutely without reserving to themselves any interest

therein (Section 128; *London & South Western Railway Co. v. Gomm*, 20 Ch. D. 562); but this will not prevent the company from imposing on the purchaser such covenants as may most conduce to their own advantage (*re Higgins & Hitchman's Contract*, 21 Ch. D. 95; Section 128). Unless the lands are situate in a town, or the lands are built upon or used for building purposes, they must be first offered, at the end of ten years or the time mentioned in the special Act, to the person entitled to the lands, if any, from which the same were originally severed, and then to the immediately adjoining owners (Section 128). This right of repurchase devolves upon future owners of the estate from which the superfluous lands were severed (*Lord Carrington v. Wycombe Railway Co.*, L. R., 2 Eq. 825).

The purchaser should therefore satisfy himself that these rights of pre-emption have been surrendered or satisfied (see *South Western Railway Co. v. Blackmore*, 23 L. T. 504).

As to the effect of a notice to treat, and especially where the notice is to take part only of a house or other building, see "The Contract," Part I., Chapter I., *ante*.

If the owner of lands refuses to convey, a company can execute a deed poll vesting the property in themselves independently of any conveyance by him (Lands Clauses Consolidation Act, 1845, s. 77). A receipt under the common seal of the company, or under the hands of two of the directors or managers of the company, acting by the authority of the company, is a sufficient discharge for the purchase money (Section 131).

Tenants in Tail.

A tenant in tail in possession can bar the entail and convey the fee; but if the deed is not enrolled within six months after execution, an estate for life only is created (*Morgan v. Morgan*, L. R., 10 Eq. 99). If the estate is

preceded by a life estate, the life tenant is generally the "protector," and his consent to bar the entail is required, and such consent must also be enrolled (3 & 4 Will. IV. c. 74, ss. 15, 22, 40, 41, 42, 46 and 47). If the consent be given by a separate deed, it will be void unless enrolled with or before the assurance (Section 46). If the consent be not obtained, only a base fee is created: *i.e.*, an estate only existing as long as there are issue of the tenant in tail (Section 34; *re Drummond and Davie* [1891], 1 Ch. 524). No particular form of disentailment is prescribed by the Act, but it must be a deed which, if the tenant in tail had been possessed of an absolute fee simple instead of an estate tail, would have been sufficient to convey the fee (*Peacock v. Eastland*, L. R., 10 Eq. 17). A mortgage bars the entail, but not a mortgage by demise, which is the proper way of mortgaging estates tail (*re Pares*, 2 Ch. D. 61). A tenant in tail cannot devise his estate by will, but the heir takes, subject to the widow's right to dower.

A tenant in tail is, however, considered a "tenant for life" under The Settled Land Act, 1882, and as such has the power of disposition there given (Section 58, Subsection 1); and the formalities required by the Act of 3 & 4 Will. IV.—*i.e.*, barring the entail, enrolment, &c.—need not be observed. But the powers given by the Settled Land Act can only be exercised for the purposes of the Act, so that where it is desired to disentail the proceeds of sale, and the investments representing the same, the provisions of the Act of 3 & 4 Will. IV. remain in full force (*Sweet's Concise Precedents*, 337; *Challis's Real Property*, 296).

The purchaser should in perusing a will keep in mind the rule in *Wild's Case* (Th. 309) that a devise to A. and his children, where there are no children at the time of the devise, gives A. an estate tail.

Trustees and Executors.—See Part III., Chapters I. to III.

CHAPTER II.

RECITALS.

A Recital in a deed twenty years old is evidence of facts, matters, and parties contained in deeds, instruments, or statutory declarations, without further proof, unless and except so far as it is proved to be inaccurate (Vendors and Purchasers Act, 1874, s. 2); but it is only evidence of so much of the deed as is stated in the recital (*Gillett v. Abbott*, 3 N. & P. 24).

In *re Marsh and Earl Granville* (24 Ch. D. 11), Mr. Justice Fry held that a recital, in a deed more than twenty years old, that the vendors "in pursuance of a trust for sale conferred on them by a certain indenture had put the property up for sale," precluded a subsequent purchaser asking for proof that the trust was then subsisting. There is also a decision of Vice-Chancellor Malins (*Bolton v. London School Board*, 38 L. T. 277) to the effect that a recital of the vendor's seizin contained in a deed twenty years old is sufficient evidence, and that a forty years' title cannot be asked for by the purchaser. It seems, however, to be the general opinion that this decision cannot be supported, as the Vendors and Purchasers Act does not provide that the recital shall be "conclusive" evidence, but only sufficient evidence, unless proved otherwise to be inaccurate. Now if a forty years' title were abstracted, this very inaccuracy might appear therein. Further, the Act expressly says that a forty years' title shall be given, and if the decision be correct the purchaser would not get such a title. Again, a vendor's seizin is a presumption of law, and it may well be doubted whether it comes within the

words "facts, matters, and parties." *Quære* also whether the effect of the decisions in *re Johnson and Tustin* (30 Ch. D. 42) and *re Moody and Yates* (30 Ch. D. 344) is not to overrule this decision.

Recitals cannot be looked at to control the operative part of a deed when there are clear words of conveyance in the operative part (*Rooke v. Lord Kensington*, 2 K. & J. 753; *Dawes v. Tredwell*, 18 Ch. D. 354). General words are not within the description of clear words of conveyance (*Neame v. Moorsom*, L. R., 3 Eq. 91). The general rule can be well gathered from the decision of the Court of Appeal in *Ex parte Dawes* (17 Q. B. D. 275): viz.—

(*a*) If the recitals are clear but the operative words ambiguous, the recitals govern;

(*b*) If the recitals are ambiguous but the operative words clear, the operative words govern; and

(*c*) If the recitals and operative words are both clear but are inconsistent, the operative words govern.

See also *Danby v. Coutts & Co.* (29 Ch. D. 500); *re de Ros*, *Hardwicke v. Wilmot* (31 Ch. D. 81); *Dawes v. Tredwell* (18 Ch. D. 354); and the recent case of *re Coghlan*, *Broughton v. Broughton* (71 L. T. 186). Recitals may also control the covenants, as where a recital that the assignee of leaseholds had an absolute term was held to render his covenant that the lease was valid and subsisting an unconditional covenant (*Barton v. Fitzgerald*, 15 East. 530; 5 *Bythewood & Jarman*, 132).

If the deed be executed after marriage in pursuance of articles made before marriage, where these articles are recited, or there is merely a general reference to them, the deed will, in Equity, be made comformable to the articles so far as the deed varies from them (*Bold v. Hutchinson*, 5 De G. M. & G. 558), though not when the articles and

settlement are both made before the marriage, unless it be expressly stated to have been made in pursuance of them (*Mignan v. Parry*, 31 Beav. 211). If it appears from a recital that the property was purchased at a sale by auction, the purchaser should ask for the conditions of sale, as the effect of the recital is to put the conditions of sale on the title (5 *Byth. & Jar.* 632); and although they could not affect the deed, as by restricting the parcels (*Doe d. Norton v. Webster*, 12 Ad. & El. 442), they may give notice of defects of title.

If the recitals disclose that the property has been purchased by trustees as an investment, the purchaser should satisfy himself that the trustees had the power to buy, as if they had not, the purchaser would be deemed to have notice of the breach of trust (*Hopper v. Conyers*, L. R., 2 Eq. 549). He should therefore consider whether the recitals give him notice of any trust which may make it necessary for the parties beneficially interested to join to make a good title, or to take from him the responsibility of seeing to the application of the purchase money.

When, as frequently happens, trust moneys have, in breach of trust, been invested on mortgage, or in the purchase of real estate, and the trust appears upon the title, a question often arises as to the competency of the trustees to deal with the property without the concurrence of their *cestui que trust*. In the case of a mortgage if the entire amount advanced is cleared by the sale no difficulty will arise, as the trustees only do their duty in remedying the breach of trust and realising the fund. In the case of an unauthorised *purchase* with trust funds, the right of the *cestui que trust* to elect to take the property as land instead of money creates a serious difficulty in the way of a sale by merely the trustees (*Dart*, 687, 688). But the consent of one only of the beneficiaries can be asked for, since the

concurrence of that one alone would be sufficient to show that all the beneficiaries had not elected to take the property in its unauthorised condition (*re Patten and Edmonton Guardians*, 52 L. J., Ch. 787).

But when a person beneficially entitled to property procures the conveyance of it to a trustee without declaring the trusts by the conveyance, and even allows the trustee to retain the deed, and the trustee deals with the property as if it were his own, the title of the beneficiary does not seem to be displaced (*Carritt v. Real and Personal Advance Co.*, 42 Ch. D. 263; *Shropshire Union Co. v. Reg.*, L. R., 7 H. L. 496).

A purchaser cannot go behind a recital evidently framed for the purpose of keeping notice of the trust off the title: for instance, a recital in a transfer of mortgage that the transferees are entitled in Equity (*Harman and Uxbridge and Rickmansworth Railway Co.*, 24 Ch. D. 720).

If the recitals disclose a marriage of any party having an estate in the property, the purchaser should ascertain in any way he can whether or not a marriage settlement has been executed affecting the property. The vendor can decline to answer the purchaser's inquiry as to this (*re Ford and Hill*, 10 Ch. D. 365).

A recital that something is intended to be done amounts to a covenant to do that thing, unless there be an express covenant to which the recital can be referred, in which case the words of the express covenant must be taken to supersede the covenant which, in their absence, would have been implied from the recital (*Elphinstone's Interpretation of Deeds*, 143, 144, 417 to 419; *Dawes v. Tredwell*, 18 Ch. D. 354). For instance, recital in a lease of an agreement by the lessee with the lessor for pulling down a mill and building another, followed by a covenant to keep the new mill in repair, *Held*, That there was an implied covenant to build it

(*Sampson v. Easterby*, 6 Bing. 644). So an admission of a debt where the recital has no other object implies a covenant for payment (*Isaacson v. Harwood*, L. R., 3 Ch. 228).

A clear and unambiguous statement contained in a recital acts as an estoppel against the party making it, for the benefit of parties executing the deed on the faith of such statement (*Palmer v. Ekins*, 2 Ld. Raym. 1553) ; but not a general statement, as that a grantor is seized of or otherwise well entitled to land (*Heath v. Crealock*, L. R., 15 Eq. 257), and not where the statement is a mutual mistake between the parties (*Empson's Case*, L. R., 9 Eq. 597). A vendor can refuse to execute a deed containing incorrect recitals (*Mansfield v. Childerhouse*, 4 Ch. D. 82).

A sub-recital does not appear, for the purpose of proving the truth of a statement contained therein, to be *a recital*, either for the purpose of Section 2 of The Vendors and Purchasers Act, 1874, or of Section 3 of The Conveyancing Act, 1881. Where a deed is stated to be supplemental to another, the recitals in the principal deed become sub-recitals in the supplemental deed (*Hood & Challis's Conveyancing and Settled Land Acts* [1895], 17, 132).

CHAPTER III.

CONSIDERATION AND RECEIPT CLAUSE, AND OPERATIVE WORDS.

I.—Consideration and Receipt Clause.

In the case of deeds operating by transmutation of the possession of property, no consideration is necessary as between the parties, nor as to strangers, except in cases of actual or constructive fraud. But in the case of deeds operating without transmutation of the possession—that is, bargains and sales, and covenants to stand seized—a consideration is absolutely necessary (*Smith's Real and Personal Property*, 6th ed. [1884], 931).

The consideration should be noticed—

(*a*) To see that the deed is not voluntary (*Clarke v. Willott*, L. R., 7 Ex. 313). But a deed which appears to be a voluntary conveyance may be shown by extrinsic evidence to have been given for valuable consideration (*Bayspool v. Collins*, L. R., 6 Ch. 228).

(*b*) If the words "unto and to the use of" are not used, a consideration is necessary to pass the fee simple (*Sir C. Hatton's Case*, Vin. Abr. Uses [H], pl. 8; see also p. 70).

(*c*) If the consideration be much smaller than in previous deeds, this may put the purchaser on inquiry as to whether the whole of the property is intended to be conveyed, and particularly so if the operative

words are ambiguous; and the inadequacy of the consideration may be so great in certain cases as to amount to evidence of fraud (*Dart's Vendors and Purchasers*, 747, and cases therein cited); especially if the vendor is an illiterate. But Equity will not set aside the deed when the parties cannot be put *in statu quo* (*Smith's Real and Personal Property*, 936). Since 1867 no purchase made *bonâ fide* of any reversionary interest shall be set aside merely on the ground of undervalue (31 Vict. c. 4; 38 & 39 Vict. c. 66). As to unconscionable bargains see *Nevill v. Snelling* (15 Ch. D. 679), and cases therein referred to.

(*d*) The Stamp Act, 1891, requires that the consideration be fully and truly set forth (Section 5). Stamp duty must be paid upon the price of all property passing by the conveyance, whether specifically described or passing by operation of law. Where fixtures, standing timber, or any other part of the inheritance are taken at a valuation, the amount of the valuation must be included in the consideration and duty paid thereon (*Alpe's Stamp Duties*, 4th ed. [1894], 106; see also "Stamps," Chapter VIII., *post*).

(*e*) Fiduciary vendors cannot sell for a rent charge or annuity (*Reid v. Shergold*, 10 Ves. 380), except when selling under the Lands Clauses Consolidation Amendment Act (23 & 24 Vict. c. 106, s. 2).

To constitute a receipt within Section 55 of The Conveyancing Act, 1881, express words acknowledging the receipt of the consideration are necessary, such as "of which sum A. hereby acknowledges the receipt"; and a mere statement that money has been expended or paid is insufficient (*Renner v. Tolley*, 68 L. T. 815). Section 2 of

The Trustee Act, 1888, was passed in order to amend and extend the operation of Section 56 of The Conveyancing Act, 1881, so as to enable a solicitor producing a deed executed by a trustee, containing a receipt for the consideration money, to receive the purchase money; and the Section is now re-enacted by Section 17 of The Trustee Act, 1893 (see *Rudall & Greig's Trustee Act, 1893*, 74). The case of *re Hetling & Merton's Contract* (69 L. T. 267) decides that a trustee can execute a deed by an attorney, and can empower that attorney to receive trust money, and that the Section will protect a purchaser in paying money to a person so authorised to act. But the power of attorney must be a special power of attorney: that is, it must refer to the particular transaction. A general power of attorney authorising a person to execute deeds and transfer property is not sufficient (see also *Day v. Woolwich Equitable Building Society*, 60 L. T. 752). One of several trustees cannot be authorised to receive the purchase money on behalf of all (*Flower v. Metropolitan Board of Works*, 27 Ch. D. 592).

When a vendor executes a conveyance without having received the whole of the purchase money, the vendor has still a lien on the land for the balance as against a subsequent purchaser with notice (*Kennedy v. Green*, 3 My. & K. 699; Conveyancing Act, 1881, s. 55, s.s. 1). Probably constructive notice would be sufficient (5 *Bythewood & Jarman*, 160). The vendor has also a lien as against the purchaser and persons taking under him as volunteers, including the trustee in his bankruptcy.

Where mortgage money has been advanced before 1882 out of moneys held on joint account, the purchaser should see that the survivor has power to give a discharge for the mortgage money. A power for the survivor to give a receipt is implied in mortgages made since 1882 (Conveyancing Act, 1881, s. 61).

In leaseholds, the purchaser of a portion of property comprised in a lease, although not chargeable for more than his proportion of rent in an action of debt (*Curtis v. Spittey*, 1 Bing. N. C. 756), is yet liable to a distress for the whole. He should therefore see that such rent is legally apportioned. If the contract precludes this, the purchaser should ask for cross powers of entry and distress to secure himself in the event of his having to pay the whole rent (*Barnewell v. Harris*, 1 Taunt. 430).

As to how far the obligation of having to pay rent under a lease prevents a deed from being voluntary, see "Voluntary Settlements," Part III., Chapter IV., *post*.

As to how far the last receipt for ground rent is evidence of the performance of the covenants in the lease see "Covenants," Chapter VI., *post*.

II.—Operative Words.

A grant only operates on the estate or interest of the grantor, and will pass no more than he is by law enabled to convey (*Smith's Real and Personal Property*, 777). But where a man unequivocally recites that he is the owner of an estate, and affects to convey it for valuable consideration, when in reality he has not such an estate, then, if by any means he afterwards acquires an interest in the estate, he is estopped from saying that he had not such interest at the time of his execution of the deed (*Smith's Real and Personal Property*, 1024).

The declaration contained in Section 49 of The Conveyancing Act, 1881, that the word "grant" is not necessary to be used to convey hereditaments is retrospective. No particular word is absolutely essential to transfer property, and probably never was (*Chester v. Willan*, 2 Williams Saund. 96). The word "grant" should, however, still be

used in selling under The Lands Clauses Consolidation Act, 1845, as in that case it implies covenants for title (Section 52).

The word "demise" in a lease implies a covenant for quiet enjoyment (*Woodfall's Landlord and Tenant*, 643).

A question has been raised as to whether the words "grant as beneficial owner," or "assign as beneficial owner," &c., are sufficient to carry covenants for title, and as to whether the necessary words are not "*convey* as beneficial owner." The Conveyancing Act, 1881, says the word "conveyance" shall include "assignment," &c., &c.; but it does not provide conversely that the words "assignment," &c., &c., shall be deemed equivalent to the term "convey" (5 *Bythewood & Jarman*, 222 to 226; *contra*, *Wolstenholm & Turner's Conveyancing Acts*, 4th ed., 33).

As to the effect of the words "beneficial owner" see *David v. Sabin* ([1893], 1 Ch. 523), and "Covenants," Chapter VI., *post*.

Where a power is purported to be exercised, the purchaser should consider whether, in this place, a reference should be made to it. Where the instrument giving the power requires the power to be referred to, it seems that it is necessary to refer to it, whether the power be a *general* power or a *special* power. But where the instrument creating the power does not require the power to be referred to, the power must still be referred to if it is a *special* power, but not if it is a *general* power (*Williams v. Mitchell* [1891], 3 Ch. 474; *re Williams*, *Foulkes v. Williams*, 42 Ch. D. 93; *in re Hardman's Trusts*, 31 L. R. Ir. 87; *Phillips v. Cayley*, 43 Ch. D. 222; *re Brace* [1891], 2 Ch. 671). The words "and in exercise of every other power enabling me in this behalf" are not a sufficient reference, unless the special power has previously been recited (*in re Porter's Settlement*, *Porter v. De Quetteville*, 63 L. T. 431).

A purchaser from a mortgagee under his power of sale is not entitled to the benefit of Section 21 of The Conveyancing Act, 1881, exempting him from inquiry as to whether a case has arisen for the exercise of the power of sale, unless the conveyance is made "in professed exercise of the power of sale conferred by this Act" (see also p. 39).

The purchaser should consider whether any life tenant, lessor, or other person should be joined to give consent in this place.

Where trustees were empowered to sell real estate with the consent of the tenant for life, who was bankrupt and had mortgaged his interest, it was held that the concurrence of the trustee in bankruptcy and of the mortgagee was necessary to make a title (*in re Bedingfield & Herring's Contract*, 68 L. T. 634).

As to a covenant not to assign without the lessor's consent not preventing a bequest by will, nor extending to an alienation by operation of law—*e.g.*, by bankruptcy or by a judgment—and as to a lessor not being allowed to charge a fine for granting a licence (except power expressly given by lease), see "Execution and Completion of Deed, Notice," &c., Chapter VII., *post*.

As to when the operative words will be construed as governing the recitals, and as to when the recitals will be construed as governing the operative words, see p. 47.

CHAPTER IV.

PARCELS.

General Rule for Interpretation of Parcels.—It is difficult to compress into a few lines a rule on this point, but it may be said generally that the result of the decisions is that where the different portions of the description of the property are not consistent, that portion which defines the property clearly and definitely will be accepted, and the remainder rejected, under the maxim *falsa demonstratio non nocet* (*Llewellyn v. Earl of Jersey*, 11 M. & W. 183; *Lyle v. Richards*, L. R., 1 H. L. 222). The strict meaning of this maxim has been stated to be that when in reading the description of the parcels of a deed there is found a clear and definite description which applies to a distinguishable subject, every word which follows may be treated as irrelevant and mere surplusage (5 *Bythewood & Jarman*, 169, *note*). The parcels may consist of one description in the body of the deed, or of a general description in the body referring to a particular description in a schedule, and the schedule may refer to a plan. These different parts must be construed together as one description, and interpreted under the above rule. But if no definite conclusion can be come to from the parts or the whole of the description, the recitals and other parts of the deed can be looked to for expressions of the intention of the parties (*Rooke v. Lord Kensington*, 2 K. & J. 753); and if these cannot be found, extrinsic evidence can in some cases be used—*i.e.*, to show to what property the description applies (*Fox v. Clarke*, 9 L. R.,

Q. B. 565), or to show what is included in the strict words of the deed; but such evidence will not be admissible if it tends to vary or contradict the deed (*Doe d. Norton v. Webster*, 12 A. & E. 442; *Lyle v. Richards*, *ante*). The above remarks do not apply to copyholds, as the custom is to keep to the old description in the parcels (*Long v. Collier*, 4 Russ. 267). Oral evidence is admissible to prove mistake (*Mortimer v. Shortall*, 2 Dru. & W. 363); but the Court will not generally interfere unless the mistake is mutual (*Earl of Bradford v. Earl of Romney*, 30 Beav. 431). As to when the recitals may be looked at to explain or control the parcels see "Recitals," Chapter II., *ante*.

New Description.—Where a new description is made of the property the purchaser should see that it includes all that it is intended to include. Carelessness in this respect has been a fruitful source of litigation.

Plan.—A reference to a plan makes it a part of the description, and the purchaser should ask for a copy (*Llewellyn v. Earl of Jersey*, 11 M. & W. 183). Though on a dispute arising as to a boundary, the map referred to by the lease being on so small a scale that it was impossible that the boundary could be ascertained from it with sufficient precision, it was held that the words of the demise were not to be controlled by the map (*Taylor v. Parry*, 1 Sco. N. R. 576). A tithe map is not evidence of boundaries between two adjoining owners (*Wilberforce v. Hearfield*, 5 Ch. D. 709). See also "General Rule for Interpretation of Parcels," above.

Roads.—The purchaser should ascertain from the borough surveyor, or other proper authority, whether the roads have been dedicated and all payments made in respect thereof, as expenses of sewering, paving, &c., incurred by a local authority under Section 150 of The Public Health Act, 1875, or under The Private Street Works Act, 1892, are a charge

on the property. As between vendor and purchaser, the vendor should pay if the work is complete at the date of the contract, although the demand for payment of the sum apportioned in respect of the premises may have been served after the purchase ought to have been completed (*re Bettesworth and Richer*, 37 Ch. D. 331).

There seems to be an exception to the rule that the soil of one half the road passes by a conveyance of land abutting on a road in the case of a conveyance of a plot of ground forming part of a building estate (*Plumstead Board of Works v. British Land Co.*, L. R., 10 Q. B. 16), and in the case of a street in a town (*Beckett v. Corporation of Leeds*, L. R., 7 Ch. 421); also to ground intended to be used as a highway, but which has never been dedicated to the public (*Leigh v. Jack*, 5 Ex. D. 264). With these exceptions, the evidence to rebut the presumption must be very strong. In one case, admeasurements, accompanied by a reference to a coloured plan in which no part of the road was included, were held to be insufficient to rebut the presumption (*Berridge v. Ward*, 10 C. B., N. S. 400). This decision was referred to with approval in the recent case of *Pryor v. Petre* (69 L. T. 795). The same principles apply to a private road, and the mere fact that a private road leads to the lands of one only of two adjoining proprietors will not be sufficient to rebut the presumption of law (*Smith v. Howden*, 14 C. B., N. S. 398; *Hunt's Boundaries and Fences*, 2nd ed., 173). And, generally, as to what is sufficient to rebut the presumption, see *Pryor v. Petre*, above.

Walls and Fences. — The purchaser should ascertain definitely as to the ownership of the walls and fences, and as to whether any of them are party walls. If the owner of two adjoining houses conveys one, there is in law an implied reservation (or regrant) to him of a right of lateral support for the house retained (*Richards v. Rose*,

9 Exch. 218; *Rigby v. Bennett*, 21 Ch. D. 559). As to the necessity of the purchaser signing the deed where it is to operate as a regrant see "Exceptions," &c., p. 63.

But if the owner, as frequently happens, builds a house and mortgages it, and then builds a house adjoining, he does not get any right of lateral support for the latter house; for at the time that he parted with the legal estate to the mortgagee the last house was not in existence, and there could be no implied reservation in respect of a house not built. The mere circumstance that two walls are in juxtaposition will not give a right of support (*Trower v. Chadwick*, 6 B. N. C. 1). It appears even doubtful whether a right of support can be gained by mere lapse of time, because there is great difficulty in implying a grant of an easement in cases where its enjoyment has not been open and as of right (*Solomon v. Vintners' Co.*, 28 L. J., Ex. 370).

The rule as to the ownership of hedge and ditch is very clearly laid down by Lawrence, J., in *Vowles v. Miller* (3 Taunton, 138):—"The rule is this: No man making a ditch can cut into his neighbour's soil, but usually he cuts it to the very extremity of his own land; he is, of course, bound to throw the soil which he digs out upon his own land, and often, if he likes, he plants a hedge upon the top of it; therefore, if he afterwards cuts beyond the edge of the ditch, he cuts into his neighbour's land. No rule about four feet or eight feet has anything to do with it." Consequently, when two estates are separated by a hedge and a single ditch, the presumption is, in default of evidence, that both ditch and hedge belong to the owner of the land on which the hedge is planted (*Hunt's Law of Boundaries and Fences*, 43, 44).

Particular Words.—"House" and "messuage" are now considered synonymous (*Williams' Real Property*, 32), and each will include a garden attached (*Shep. Touch.* 94; *St.*

Thomas's Hospital v. Charing Cross Railway Co., 1 J. & H. 404); so also will the word "cottage" (*Shep. Touch.* 94).

The word "farm" will include the principal dwelling-house and all arable land, meadow, pasture, wood, &c., thereto belonging or therewith occupied (*Shep. Touch.* 94). The word "share," even in a deed, may embrace accruing as well as original shares (*Doe d. Clift v. Birkhead*, 4 Ex. 110).

A grant of a "wood" will carry the soil, but not a grant of "trees" (*Stanley v. White*, 14 East. 332). Therefore, by an exception in a lease of the woods and underwoods growing or being on the property demised, the soil itself on which they grow is excepted (*Whistler v. Paston*, Cro. Jac. 487).

A grant of "water" will not carry the soil, but it has been said that the grant of a "pool" will (*Co. Litt.*, 4 *b*).

As to what words in a will are sufficient to pass property see "Wills," Part III., Chapter I., *post*.

Minerals.—A lease (for however long a period) does not pass to the lessee the right to work unopened mines without special power being given (*Astry v. Ballard*, 2 Lev. 185).

In some land societies the minerals are reserved to the trustees with power to deal with them as a whole, but with no power to convey the minerals under a particular plot to a member or purchaser. The purchaser should ask for a copy of the rules where the land has formed part of a land society to satisfy himself as to the powers of the trustees.

Mines and minerals do not pass under an enfranchisement deed (Copyhold Act, 1894, s. 23; *Rudall & Greig's Copyhold Enfranchisement*, 47); nor do they pass to a railway or waterworks company by a conveyance under the Consolidation Acts (8 & 9 Vict. c. 20, s. 77, and 10 Vict. c. 17, s. 18), unless specifically mentioned.

An exception of mines and minerals will carry with it a reservation of all powers necessary for working the minerals without these powers being expressly reserved (*Aspden v.*

Seddon, L. R., 10 Ch. 394); but not so as to damage the surface, even though this restriction would destroy the value of the right (*Munday v. Duke of Rutland*, 23 Ch. D. 81), except where the surface is purchased by a railway company, in which case, if the company, after notice that the minerals are going to be worked, does not purchase, the owner can work them without regard to the surface (8 & 9 Vict. c. 20, s. 78; *Great Western Railway Co. v. Bennett*, L. R., 2 H. L. 27), even though the consequence be the destruction of the railway (*Ruabon Brick & Terra Cotta Co. v. Great Western Railway Co.*, 62 L. J., Ch. 483). The owner, however, cannot enter upon or cross over the railway to get to his mines, but must tunnel under it (*Midland Railway Co. v. Miles*, 30 Ch. D. 634).

Mr. White points out that the words "mines and minerals" are not mentioned in Section 6, Sub-section 1, of The Conveyancing Act, 1881, among the words to be implied by a conveyance of land, though they are mentioned in Sub-section 3 of the same Section among the words to be implied by a conveyance of a manor, and he suggests that mines and minerals should therefore be expressly mentioned in a conveyance (*White's Conveyancing Act, 1881*, 16). Messrs. Hood & Challis give the reason for the distinction made by the Act—namely, that anything once severed from a manor cannot be reunited (*Revell v. Jodrell*, 2 T. R. 415); but mines and minerals severed from land can be reunited at will, and the specific mention of things parcel of the thing conveyed is not only useless, but may be dangerous if the enumeration is not exhaustive (*Denison v. Halladay*, 3 H. & N. 670; *Hood & Challis's Conveyancing and Settled Land Acts* [1895], 31).

There is a distinction between a reservation of mines and a reservation of minerals. In the former case the stratum is reserved, and the owner can use it for any purpose he

thinks fit: *e.g.*, he may make a road through it for the conveyance of the produce of adjoining mines (*Duke of Hamilton v. Graham*, L. R., 2 H. L. 166). In the latter case he could only take the minerals (*Ramsay v. Blair*, L. R., 1 App. Ca. 701). "Mines and minerals" include beds of limestone (*Hext v. Gill*, 7 L. R., Ch. 699; approved in *Fishbourne v. Hamilton*, 25 L. R. Ir. 483).

A trustee cannot sell the land and minerals separately without the sanction of the Court, except under The Settled Land Acts, 1882 to 1890 (Trustee Act, 1893, s. 44). Under Section 2 of 25 & 26 Vict. c. 108, a mortgagee could, with the sanction of the Court, sell the land and minerals separately (*re Beaumont's Mortgage Trusts*, L. R., 12 Eq. 86). But as this Section is now repealed, it would appear that the Court has now no power to give its sanction, especially as the word "trust" is not (by the Act) to apply to the duties incident to a mortgage estate (Section 50; *Rudall & Greig's Trustee Act, 1893*, 69, 137).

Exceptions, Reservations, Easements, and Appurtenances.—The distinction between an exception and a reservation is often overlooked. An exception is of a part of the thing granted; a reservation is of some right or profit to arise out of it (5 *Bythewood & Jarman*, 177).

The general words implied by Section 6 of The Conveyancing Act, 1881, would seem to be explicit enough even to revive easements which have become extinct by unity of possession (*Barlow v. Rhodes*, 1 Cr. & M. 448), and to pass easements which have been first created by the grantor during unity of ownership, provided that they are either necessary or apparent and continuous (*Kay v. Oxley*, L. R., 10 Q. B. 360; *Watts v. Kelson*, L. R., 6 Ch. 166, 172; *Barkshire v. Grubb*, 18 Ch. D. 616). The general words will not, in the absence of any special relation between the parties (as in *Doidge v. Carpenter*, 6 M. & S. 47), be sufficient to create a right of

common (*Baring v. Abingdon*, 67 L. T. 6). Under an open contract the purchaser is only entitled to have such general words expressed or implied in his conveyance as he would have been entitled to before The Conveyancing Act, 1881; and if the general words implied by Section 6 are more extensive, the vendors are entitled to limit them accordingly (*in re Peck and London School Board*, 62 L. J., Ch. 598).

Even before The Conveyancing Act, 1881, by the grant of a part of a tenement all those continuous and apparent easements, or quasi-easements, over the part retained by the grantor, which were necessary to the enjoyment of the part granted, and had before and up to the time of the grant been used therewith, passed to the grantee by implication of law (*Wheeldon v. Burrows*, 12 Ch. D. 31).

The same principle is applicable to devises.

Where a testator, being seized of a house with windows and a field adjoining over which the light required for the windows passed, devised the house to one person and the field to another, *Held*, That the right to light over the field was comprised in the devise of the house (*Phillips v. Low*, 65 L. T. 552). In the case of a conveyance, the right to light sufficient for all ordinary purposes of business in the locality at the time of the contract will pass (*Corbett v. Jones*, 67 L. T. 191; *Bailey v. Icke*, 64 L. T. 789; *Aldin v. Latimer & Others*, 71 L. T. 119). Where land is sold to be used for a particular purpose, the grantor must not do any act which would interfere with that purpose (see "Covenants," Chapter VI., *post*).

In the absence of express stipulation the grantor of part of a tenement retains no rights over the part granted (*Wheeldon v. Burrows*, *ante*; *Russell v. Watts*, 25 Ch. D. 559), even although—as in the much questioned case of *Pye v. Carter* (1 H. & N. 916), referring to a drain—the easement be apparent and continuous (*Suffield v. Brown*,

33 L. J., Ch. 249). To this latter rule there is an exception in the case of easements of necessity. For instance, if the owner of property conveys a part, there are reserved to him by implication such rights as are absolutely necessary to enable him to beneficially enjoy the portion retained. If the owner have no access to the portion retained except through the property sold, the law will give him a right of way over the land sold, although he shall not have reserved it (*Clarke v. Cogge*, Cro. Jac. 170; *Corporation of London v. Riggs*, 13 Ch. D. 798; see also "Walls," *ante*). The case of easements being impliedly reserved for the benefit of the purchasers of several lots of property conveyed at one time is not an exception to the general rule above given, but proceeds on the presumption that each of the grantees takes from the grantor, while he has the power to give it, what it is right the grantee should get, and is construed as if each grant were first in order of time (*Allen v. Taylor*, 16 Ch. D. 355; *Rigby v. Bennett*, 21 Ch. D. 355; *Russell v. Watts*, *ante*). Each purchaser, therefore, in such a case gets an implied grant of all easements necessary for enjoyment of the property purchased.

In every case a reservation of an easement will be construed as a regrant. The importance of this is that the deed must be executed by the purchaser, or else there cannot, it appears, be even a regrant (*Corporation of London v. Riggs*, *ante*; *Wickham v. Hawker*, 7 M. & W. 63, at p. 76; *Ellis v. The Manchester Carriage Co.*, 2 C. P. Div. 13; *Wheeldon v. Burrows*, *ante*).

A general condition of sale that the property is sold subject to all easements affecting the property will not protect the vendor in respect of any easements not disclosed by the contract, and of which he was aware (*Heywood v. Mallalieu*, 25 Ch. D. 357; *Nottingham Brick & Tile Co. v. Butler*, 15 Q. B. D. 261).

Misdescription.—A condition of sale stating that the purchaser shall not be entitled to compensation in the event of error will be held to apply only to trivial errors, and will not prevent the purchaser obtaining compensation in the case of a substantial misdescription (*Whittemore v. Whittemore*, L. R., 8 Eq. 603; *in re Terry and White*, 32 Ch. D. 14; see also "Contract," Part I., Chapter I., *ante*).

Fixtures.—Where a machine was delivered to a mortgagor, the purchase money to be paid by instalments, but the machine to remain the property of the vendors until the last instalment paid, *Held*, That the mortgagees could not claim the machine, as the mortgagor could not give them a better title than he had himself (*Cumberland Union Banking Co. v. Maryport Hæmatite Iron Co.* [No. 2], 66 L. T. 108). But query whether the mortgagor had not power to pledge by virtue of Section 9 of The Factors Act, 1889 (see *Shenstone & Co. v. Hilton*, 71 L. T. 339).

A mortgage of land passing trade machinery by reason of its being affixed to the land need not be registered as a bill of sale (*re Yates, Batcheldor v. Yates*, 59 L. T. 47). But if the fixtures are mentioned and assigned, the deed is void as regards such fixtures for want of registration (*Small v. National Provincial Bank of England*, 70 L. T. 492); the deed would not be void *in toto*, but only as regarded the fixtures so assigned (*re Burdett, ex parte Byrne*, 58 L. T. 708).

CHAPTER V.

HABENDUM.

General Rules of Construction.—A Deed can be good without an habendum at all (*Shep. Touch.* 74). If no habendum, the grantee will take the quantum of estate mentioned in the premises (*Goodtitle d. Dodwell v. Gibbs*, 5 B. & C. 709); but if no quantum be mentioned, he will take an estate for life (*Altham's Case*, 8 Rep. 154 *b*).

An habendum should not be used in a deed operating as an exercise of a power of appointment, as the province of the deed is merely to declare the use (5 *Bythewood & Jarman*, 206).

The proper office of the habendum is merely to limit the quantum of estate that the grantee is to have in the property granted (*Shep. Touch.* 75). If therefore the parcels be mentioned in the habendum but not in the premises, they will not pass. For instance—Grant of Blackacre, habendum Blackacre and Whiteacre, Whiteacre will not pass (*Shep. Touch.* 75; 1 *Davidson's Prec.* 101). Again, if the whole of the parcels described in the premises be not referred to in the habendum, the habendum will only be allowed to limit that portion mentioned therein. The remaining portion, however, may pass by the grant in the premises, under the above rule that an habendum is not an essential part of a deed. For instance—Grant to A. of Blackacre and Whiteacre, habendum Blackacre unto and to the use of A. in fee simple: here A takes an estate for life in Whiteacre by the grant in the premises, and he takes an estate in fee in

Blackacre owing to the express limitation in the habendum. Example mentioned at page 76 of *Shep. Touch.* adapted to modern conveyancing. So also, it not being the primary duty of the habendum to name the grantee, if the grantee be named in the proper place—that is, the premises—and afterwards is mentioned with others in the habendum, the grant to "the others" is bad. For instance—Lease to A., habendum to A. and B. for years. *Held*, That B. took nothing (*Reynold v. Kingman*, Cro. El. 115). But if the estate of B. had been expressly limited to take effect after the estate of A., the limitation to B. would have been good (*Kerr v. Kerr*, 4 Ir. C. R. 493). If, however, no person is mentioned as grantee in the premises, the person mentioned as grantee in the habendum takes the estate limited by the habendum (*Butler v. Dodton*, Cary Rep. in Ch. 123). So, under an assignment to A. and B., habendum to B., A. *and* B. would take, as, the assignees being named in the proper place (the premises), the limitation in the habendum would be rejected (*Reed v. Fairbanks*, 13 C. B. 692).

Although the habendum is the proper place for limiting the quantum of estate to be taken, if the premises expressly limit an estate and the habendum limits a different estate, the habendum will generally be rejected as repugnant, under the rule that when two parts of a deed are inconsistent the former shall prevail (*Shep. Touch.* 78; *Goshawk v. Chigwell*, Cro. Car. 154), unless the habendum can be construed as explanatory of the premises (*Goodtitle d. Dodwell v. Gibbs*, 5 B. & C. 717). A good example of explanation is given in *Cok. Lit.* 183 *b*: "If a case be made to two, habendum the one moiety to the one and the other moiety to the other, the habendum doth make them tenants in common; and so one part of the deed doth explain the other, and no repugnancy between them." But if there be a palpable error in the premises which makes

it inconsistent with the habendum, this rule would not prevent the Court from correcting the error in the premises instead of rejecting the habendum (*Spyve v. Topham*, 3 East. 115; 5 *Bythewood & Jarman*, 204).

There is much learning in the books on the subject of the habendum, but, owing to the decisions being so contradictory, it is difficult to deduce general rules therefrom. A further source of confusion, even in the minds of the authors of some text books, is caused by not bearing in mind that the greater portion of the cases were decided when "uses" had not been introduced, or not generally adopted: for where the quantum of estate is limited by the declaration of the use, the reasoning of these old cases does not apply.

It may, however, be stated generally that where there is repugnancy, the tendency of the Court now is not to slavishly follow old rules of construction, but to endeavour, if possible, to collect the intention of the parties from the whole instrument, and to reject that part which is inconsistent with such intention (*Spyve v. Topham*, 3 East. 115). Habendum in a lease for 94¼ years, yielding rent during 91¼ years. The counterpart had 91¼ years in the habendum. *Held*, That, there being a manifest clerical error in the lease, the counterpart could be looked at to find where the mistake was, and the lease was corrected to 91¼ years (*Burchell v. Clark*, L. R., 2 C. P. D. 88).

Future Estate.—If the habendum limits a freehold estate *in futuro*, the habendum will be bad, and, unless the defect is cured by the premises containing an express grant *in præsenti*, the deed will be bad altogether (*Boddington v. Robinson*, L. R., 10 Ex. 270). This is an illustration of the above-mentioned rule that, if the premises distinctly express the estate, the habendum will be rejected if it is

repugnant, and cannot be construed as explaining the estate granted by the premises. A corollary of this rule is that if the premises do *not* contain any express limitation of estate, there is nothing to explain or contradict, and therefore it must be presumed that the habendum contains the expression of intention of the parties as to the estate to be taken; and if the estate thereby limited be contrary to law, the deed will be void (*Goodtitle d. Dodwell v. Gibbs, ante; Boddington v. Robinson, ante*).

Declaration of the Use.—If the words "unto and to the use of" in a grant of freeholds be not used, the purchaser must consider whether, from the nature of the transaction, as by payment of a consideration or for any other cause, the legal seizin is to remain in the grantee, as if there be no consideration or "other cause" the estate will revert to the grantor (2 *Preston on Abstracts*, 236). But in a deed purporting to exercise a power of appointment, the property should be appointed "to the use of" only, and not "unto and to the use of," as in this latter case only an equitable estate would pass; for the appointee merely takes a use, and no use, to be effectual under the Statute of Uses, can be declared of the seizin of such appointee (3 *Preston on Abstracts*, 124).

For instance, an appointment to A. to the use of B. executes the use and vests the legal estate in A., and the equitable estate only in B. But a grant "unto A. to the use of A.," or "unto and to the use of A.," does not operate under the Statute of Uses, or as a declaration of use at all. It operates as a Common Law grant; and the words "to the use of A." in the first form, and "and to the use of" in the second form, are mere surplusage (*Orme's Case*, L. R., 8 C. P. 281; *Hadfield's Case*, *ibid.*, 306; and *Lowcock v. Broughton*, 12 Q. B. D. 369).

Words of Limitation.—Before 1882, to pass the fee to an

individual (as distinguished from a corporation) it was absolutely necessary to use the word "heirs." Even the word "heir," in the singular, would not have been sufficient, and would only have created an estate for life (*Chambers v. Taylor*, 2 My. & Cr. 376). But this rule did not apply to a grant to a corporation sole, the proper words here being "successors" or "successors and assigns." Indeed, the word "heirs" in this case would be incorrect, and would not have passed the fee (*Cok. Lit.* 8 *b* and 94 *b*).

These words are sometimes employed in a grant to a corporation aggregate, such as a company; but, though the addition is harmless, it is inaccurate, as a corporation aggregate has no successors, but continues until it is wound up (Hy. VIII. 15).

So, before 1882, to pass an estate tail it was necessary to use the words "heirs of the body." For instance, a gift to A. and his "heirs male," without stating of whose body, would give A. the fee and not an estate tail (*Lit.* s. 31).

Can Equitable Estates in Fee Simple be Granted Without Words of Limitation?—According to *Cruise's Digest* (vol. i., p. 343), "In the alienation of uses none of those technical words which the law requires in the limitation of particular estates were deemed necessary. Thus a use might be limited in fee simple without the word 'heirs.'" Trusts are the successors of the old uses; and it might be contended, therefore, that if the Chancery Judges could find a trust, or, indeed, any equitable interest, they would not require the employment of words of limitation in a grant of an equitable fee simple. But *Lewin's Law of Trusts* (9th ed., p. 114) says, "It must be considered a clear and settled canon that a limitation in a trust, perfected and declared by the settlor, must have the same construction as in the case of a legal estate executed"; and Mr. Justice Chitty has adopted Mr. Lewin's opinion in *re Whiston's Estate*, *Lovatt v. Williams*

(70 L. T. 681; *Law Times*, March 10, 1894, 431). See also the Irish decision, *Meyler v. Meyler* (11 L. R. Ir. 522), which decides the point in the same manner.

A conveyance without words of limitation passes only an estate for life (*Shep. Touch.* 88).

Since 1881, the words "in fee simple" and "in tail" have been sufficient to pass the fee and an estate tail respectively (Conveyancing Act, 1881, s. 51).

No words of limitation are required in vesting declarations under Section 34 of The Conveyancing Act, 1881, nor in statutory transfers under Section 27 of the same Act; nor in the case of a release by one partner to another, or by one joint tenant to another (4 *Cruise's Digest*, 4th ed., 278, 279).

The purchaser should consider whether there are any words in the grant, or any circumstances to make the grantees, where more than one, tenants in common. *Primâ facie* every grant to two or more persons is a grant to them jointly (3 *Prest.* 48). But there are several exceptions to the rule:—

(*a*) Persons advancing money on mortgage in any shares are, in Equity, tenants in common (*Harrison v. Barton*, 1 J. & H. 292). See "Parties" and Mortgagees," Chapter I., *ante*.

(*b*) The legal estate in property purchased for the purpose of joint trade will devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust for the parties beneficially interested (*Davies v. Games*, 12 Ch. D. 813; Partnership Act, 1890, s. 20, s.s. 2).

(*c*) If land be conveyed to purchasers, not otherwise in partnership, as joint tenants, but for the purpose

of a joint speculation, there is no survivorship in Equity (*Darby v. Darby*, 3 D. 495; Partnership Act, 1890, s. 20, s.s. 3).

(*d*) If property was conveyed to a husband and wife and a stranger before 1882, the husband and wife became tenants by entireties: that is, the husband and wife took one moiety, and the stranger the other (*Ward v. Ward*, 14 Ch. D. 506). After 1882, under similar circumstances, the moiety taken by the husband and wife would be divided between them, and the wife would take her half of the moiety for her separate use under The Married Women's Property Act, 1882 (*re March*, W. N. [1884], 170).

(*e*) Where the purchase is made by several persons and paid for by them in unequal shares, they become tenants in common in Equity, even though the legal limitations be to them as joint tenants (*Lake v. Craddock*, 3 P. Wms. 158).

When Trustees Take the Legal Estate.—If trustees have no active duties to perform, such as the receipt and payment of rents, the sale of the property or the like, they take no part of the legal estate, unless it is granted to them in strict accordance with the Statute of Uses (*Nash v. Ash*, 1 H. & C. 160; *Williams v. Waters*, 14 M. & W. 53). But if the trustees must take the legal estate for the purpose of performing some active duties, and the limitation to them is not by the words of the deed restricted to the duration of some particular period, but is made to them and their heirs, they will take the legal estate in fee simple, unless that construction would be inconsistent with some other provisions in the deed (see *Fowler v. Lightburn*, 11 Ir. Ch. R. 495; *Godefroi's Law of Trusts*, pp. 10 and 11, and the cases there cited). The

Statute of Uses does not, of course, apply to leaseholds (see *Mayor of Liverpool v. Stevenson*, L. R., 10 Q. B. 81; *Baker v. White*, 20 Eq. 166; *Lewin on Trusts*, Chapter XII., s. 1, 192; and *Elphinstone's Interpretation of Deeds*, 271).

The rule under Wills is wider, as the testator's intention is regarded, and not merely the form of words (see pp. 110 to 113).

Leaseholds.—The purchaser should, in addition to the above points, notice whether the document is by way of assignment or underlease. If the property is sold as held under a lease, and the document turns out to be an underlease, a good title is not made (*re Beyfus and Master*, 39 Ch. D. 110). If a mortgage has been effected by underlease, it should be seen that the last day or days has or have been got in. The purchaser should also note that the term and rent are the same as mentioned in the contract, and if lower he should ask for compensation (*Jones v. Rimmer*, 14 Ch. D. 588; see also "Contracts," Part I., Chapter I., *ante*; and as to apportionment of rent see "Consideration," Chapter III., *ante*).

Incumbrances.—Tithe Rent Charge and Land Tax do not appear to be incumbrances, and the purchaser cannot ask for compensation, although they may not be referred to in the contract (*re Ebsworth and Tidy*, 60 L. T. 841; see also p. 41).

CHAPTER VI.

COVENANTS.

Covenants Generally.—A Covenant contained in a deed will bind a person who has accepted the benefit of the deed, although he may not have executed it (*Wilson v. Leonard*, 3 Beav. 173; *Bowes v. Law*, 9 Eq. 636; *Webb v. Spicer*, L. R., 13 Q. B. 886; *Witham v. Vane*, 44 L. T. 718; see also *Dart's Vendors and Purchasers*, 897); and the benefit of a covenant contained in an indenture respecting any tenements or hereditaments may be taken, although the taker thereof be not named as a party thereto (8 & 9 Vict. c. 106, s. 5).

Where land is sold to be used for a particular purpose, the grantor is under an obligation to abstain from doing anything on the adjoining property belonging to him which would prevent the land from being used for the purpose for which the grant was made (*Robinson v. Kilvert*, 61 L. T. 60; *Aldin v. Latimer & Others*, 71 L. T. 119).

If the language of the covenant is ambiguous, the recitals can be looked at for an explanation of the ambiguity (*re Coghlan, Broughton v. Broughton*, 71 L. T. 186).

A covenantee, or purchaser covenantee, may lose his right to enforce a covenant by his conduct, which may bring him within the doctrine of acquiescence (*Sayers v. Collyer*, 48 L. T. 939; *Kelsey v. Dodd*, 52 L. J., Ch. 34; *Western v. Macdermott*, 15 L. T. 641; *Meredith v. Wilson*, 69 L. T. 336). But there can be no acquiescence arising from constructive notice (*Wilmott v. Barber*, 43 L. T. 95).

Covenants for Title.—The absence of covenants for title

does not seem to be an objection to title (3 *Preston on Abstracts*, 58); and a purchaser is not entitled to a regular chain of covenants for title (*Sugden's Vendors and Purchasers*, 14th ed., 575).

A question has been raised as to whether the use of the words "grant as beneficial owner," &c., or "assign as beneficial owner," &c., are sufficient to carry covenants for title, and as to whether the necessary words for this purpose are not "*convey* as beneficial owner." The Conveyancing Act, 1881, says the word "conveyance" shall include "assignment," &c., &c., but it does not provide conversely that the words "assignment," &c., &c., shall be deemed equivalent to the term "conveyance" or "convey" (5 *Bythewood & Jarman*, 222 to 226; *contra*, *Wolstenholm & Turner's Conveyancing Acts*, 4th ed., 33). As to the effect of the words "beneficial owner" see the decision of the Court of Appeal in *David v. Sabin* ([1893] 1 Ch. 523).

Covenants for title are to be construed literally, and without the importation of any exception not introduced by express words. Consequently, covenants for title, which in their literal construction are wide enough to apply to a defect in title disclosed by a recital in the deed of conveyance itself, do in law so operate (*Hunt v. White*, 37 L. J., Ch. 326, overruled; *Page v. Midland Railway Co.*, 70 L. T. 14).

Even though the conditions omit to state that the vendor is a trustee, the purchaser could not insist on further covenants than that he had done no act to incumber, nor refuse to complete upon the ground of the vendor declining to enter into them (*Dart's Vendors and Purchasers*, 146).

A liquidator of a company is not strictly a trustee, and it may be doubted, therefore, whether the statutory covenant against incumbrances would be implied by his being

expressed to convey as "trustee" (*5 Bythewood & Jarman*, 493, *note*).

The usual covenant for title is not broken by an admission by the vendor that certain encroachments made by him belong to the owner of adjoining land, and by an agreement by the vendor to pay an annual rent for the said encroachments by way of acknowledgment (*Thackeray v. Wood*, 34 L. J., Q. B. 226; *Hunt's Boundaries and Fences*, 119).

Covenants for title are still implied by the use of the word "grant" in conveyances by public companies of superfluous land, under The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18, s. 52).

The word "demise" in a lease implies a covenant for quiet enjoyment (*Woodfall's Landlord and Tenant*, 643).

Where trustees are selling with the consent of the tenant for life, the latter should give the usual covenants for title, but they should be limited, as regards the reversion, to the acts of himself and persons claiming under him (*Earl Poulett v. Hood*, L. R., 5 Eq. 115).

A vendor selling to a company under compulsion by The Lands Clauses Consolidation Act, 1845, cannot be asked to give covenants for title (*Baily v. De Crespigny*, L. R., 4 Q. B. 180; but see *Harding v. Metropolitan Railway Co.*, 7 Ch. D. 154). If the vendor refuses to convey, the company can execute a deed poll vesting the property in themselves independently of any conveyance by him (Section 77).

Covenants Restricting the User of Property.—It must be considered whether there are any covenants restricting the user of the property, as, in the absence of stipulation to the contrary, such restrictions would be an objection to title (*re Higgins and Hitchman*, 21 Ch. D. 95; *re Davis and Carey*, 40 Ch. D. 601). In determining this question, it must be borne in mind that the cases draw a distinction

between (*a*) covenants affecting freehold property and (*b*) covenants affecting leasehold property.

(*a*) *Covenants Affecting Freehold Property.*—As regards freehold property, it may be said generally that covenants will not bind a purchaser unless (1) they are restrictive, *and* (2) the purchaser has notice thereof. For, since the decision in *Tulk v. Moxhay* (2 Phil. 774), it has been usual to rest the obligation of a purchaser of land subject to restrictive covenants to observe those covenants, rather on the ground that he has taken with notice, actual or constructive, than on the ground that the covenants, being expressed to bind assigns, run with the land (*Dart's Vendors and Purchasers*, 766). When a purchaser has bought land *bonâ fide* without notice of restrictive covenants, another purchaser from him would not be bound by such covenants, even though he had notice thereof (*Nottingham Patent Brick Co. v. Bowles*, L. R., 16 Q. B. D. 778).

As regards freehold property, *no* covenants can be said, in the strict sense of the word, to *run* with the land (*Austerberry v. Corporation of Oldham*, 27 Ch. D. 785), except covenants for title, and the obligation of an acknowledgment of the right to produce deeds, and of an undertaking for their safe custody. There is an apparent but not real exception to this statement in the case where a covenant, imposing a burden upon land, amounts either to a grant of an easement, or of a rent charge, or of some estate or interest in the land, for this is rather the liability of a grantor under a grant than the liability of a covenantor under a covenant (*idem*). The same case—which is a veritable essay on covenants—decided that something more is required to make a covenant binding on the assignee than that it is restrictive: that is, that the assignee must have notice of it (see also *Haywood v. Brunswick Permanent Benefit Building Society*, L. R., 8 Q. B. D. 403; *Tulk v. Moxhay*,

2 Phil. 774; *Mackenzie v. Childers*, 43 Ch. D. 265; and *Sugden's Vendors and Purchasers*, 14th ed., 596). In such a case the assignee will be bound, although the "assigns" be not expressly mentioned in the covenant (*Wilson v. Hart*, 1 Ch. D. 463). But the covenant must be strictly restrictive: that is, it must be a covenant enforceable against the land. For instance, a covenant to erect a dwelling-house on land would not bind a purchaser, even with notice (*London & South-Western Railway Co. v. Gomm*, 20 Ch. D. 562). The purchaser will be deemed to have notice if a proper investigation of the title would have disclosed the covenant (*Patman v. Harland*, 17 Ch. D. 353), though not of such matters as he would not have ascertained without going behind the documents of title themselves (*Earl of Gainsborough v. Watcombe Terra Cotta Clay Co.*, 54 L. J., Ch. 991). Neither will he be considered to have notice of a restrictive covenant if not contained in a purchase-deed, but in a separate instrument (*Carter v. Williams*, L. R., 9 Eq. 678). See further as to "Notice," Chapter VII., *post*.

If the covenants are not restrictive they will not bind a purchaser, even with notice. Where the covenant is partly restrictive and partly not, the Court will in a proper case enforce the restrictive portion of the covenant (*Clegg v. Hands*, 44 Ch. D. 503).

(*b*) *Covenants Affecting Leasehold Property.*—As regards leaseholds, there is, as has been said, a distinction. The reason is that everybody is presumed to know that leases contain restrictions and limitations, and every purchaser naturally looks first at the lease to ascertain what estate he is about to purchase. On the other hand, it does not at all follow that a conveyance will contain any onerous covenants, and, therefore, a purchaser would not be supposed to necessarily look at the earlier title deeds (5 *Byth. & Jar.* 260).

So that in the case of leaseholds covenants *can* be said, in the strict sense of the word, to run with the land; and (differently from freeholds) covenants both restrictive and for the performance of an act with regard to land will, if they are such as run with the land, bind the assignee. What covenants, then, *do* run with the land?

1. A covenant to do something regarding a thing *in esse*, part and parcel of the thing demised, will run with the land—as a covenant by a lessee to repair during the term an existing wall on the land demised.

2. Where the covenant is to do something *new* on the land demised, the assignee is bound only if named, so that where there is a covenant to build a wall on the land demised, the assignee will only be bound if named (see *infra*).

3. In the case of a covenant to do something entirely collateral to the property demised, the assignee will not be bound, although named: for instance, a covenant to build a wall on land not part of the land demised would not bind the assignee (*Spencer's Case*, 5 Co. 16; 1 *Smith's L. C.*, 8th ed., 68).

As to the second case above mentioned, doubts have been raised as to whether assigns would be bound even though named (*Minshall v. Oakes*, 2 H. & N. 793). As to assigns being named, The Conveyancing Act, 1881, does not appear to have altered the law, as Sub-section 2 of Section 58 deals only with the devolution of the benefit of covenants; and assigns are not mentioned in Section 59. But whether assigns be named or not, they would be bound if they had notice of the covenant (*Tulk v. Moxhay* and *Patman v. Harland*, *ante*), and as it is almost impossible for them not to have notice, constructive or otherwise, the point is practically not of much importance.

The ordinary covenant for quiet enjoyment in an under-

lease is no protection in case the superior lessor takes possession, as he is not a person claiming "by, through, or under" the underlessor (*Stanley v. Hayes*, L. R., 3 Q. B. 105; approved and followed in *Kelly v. Rogers*, 66 L. T. 582).

The last receipt for ground rent is not evidence of the performance of the covenants in the lease where the rent reserved is merely a peppercorn rent (*re Moody and Yates*, 30 Ch. D. 344). In order to render acceptance of rent a waiver of a cause of forfeiture, the lessor must have notice or knowledge of such cause at the time of the supposed waiver (*Pennant's Case*, 3 Co. R. 63 *b*; *Woodfall's Landlord and Tenant*, 1882 ed., 299). Where the breach is of a continuing nature, the waiver of any forfeiture up to a certain day will afford no defence to an ejectment for a subsequent breach (*Cole's Eject.* 409; *Woodfall*, 300). But if the lessor permit the tenant to expend money in alterations or additions not allowed by the lease, it would seem that it is evidence to be left to a jury of his consent thereto (*Doe d. Sheppard v. Allen*, 3 Taunt. 78; *Woodfall*, 301). A waiver of a particular breach does not act as a general waiver (23 & 24 Vict. c. 38, s. 6). See also generally as to when receipt for ground rent is evidence of performance of covenants *re Higgins and Percival* (57 L. J., Ch. 807).

It is an objection to title if other property is included in the lease with a general proviso for re-entry for breach of covenant (*Cresswell v. Davidson*, 56 L. T. 811).

Covenants in a lease may be an objection to title where such covenants are unusual, and the purchaser has not had a reasonable opportunity of inspecting same (*Reeve v. Berridge*, 20 Q. B. D. 523); and as to when a covenant against assignment contained in a lease may be an objection to title see *Bishop v. Taylor* (64 L. T. 529).

An assignee is not liable for the rent and covenants contained in the lease after he has executed an assignment

to another person; so that if the vendor is not the original lessee, he is not entitled to a covenant from the purchaser indemnifying him from the payment of the rent and observance &c. of the covenants, unless the vendor is under the obligation of a covenant entered into with a prior assignee (*Moule v. Garrett*, L. R., 7 Ex. 101; 1 *Prideaux: Purchase Deeds*).

Where a lessor is proceeding to enforce a right of re-entry or forfeiture by reason of the breach of any covenant in a lease, the Court may, on the application of an underlessee, make an order vesting the property, or any part thereof, in such underlessee on conditions (Conveyancing Act, 1892, s. 4; see *Warden &c. of Highgate School v. Sewell* [1893], 2 Q. B. 254).

Building Scheme.—If the property has been part of an estate laid out according to a general building scheme, the purchaser should consider whether, by reason of actual or constructive notice thereof, he is restricted from using the property so as to be inconsistent with such scheme (see *Tindall v. Castle*, 52 L. J., Ch. 555; *in re Birmingham & District Land Co. and Allday*, 67 L. T. 850; *Everett v. Remington*, 67 L. T. 10; *Tucker v. Vowles*, 67 L. T. 763). But where there is a general building scheme, and then, either by permission or acquiescence, or by a chain of circumstances, the property becomes so changed that the character of the place or neighbourhood is altered and the object for which the covenant was originally entered into at an end, the covenant cannot be enforced (*Duke of Bedford v. Trustees of the British Museum*, 2 My. & K. 552; *German v. Chapman*, 37 L. T. 685; *Sayers v. Collyer*, 28 Ch. D. 103). As to what breaches are considered sufficient to change the character of the neighbourhood see *Meredith v. Wilson* (69 L. T. 336). If the person who is endeavouring to enforce the covenant has himself been guilty of a breach, he cannot enforce such

covenant, unless the breach is only a slight or trivial one, and such person does not insist that he is entitled to continue it (*Western v. Macdermott*, 15 L. T. 641). There can be no acquiescence arising from constructive notice (*Wilmott v. Barber*, 43 L. T. 95).

The Benefit of Covenants.—As to when the assignee may claim the benefit of covenants, it is more difficult to lay down a general rule. In the great case of *Austerberry v. Corporation of Oldham* (27 Ch. D. 785), before referred to, Cotton, L. J., said that, "in order that the benefit may run with the land, the covenant must be one which relates to or touches and concerns the land of the covenantee." There must also be something in the deed to define the property for the benefit of which it was entered into. The purchaser must also be aware of the covenant, as unless he is, he cannot be said to have contracted for the benefit of the covenant (*Master v. Hansard*, 4 Ch. D. 718). Where the owners of an estate sold part of it to A., who entered into restrictive covenants with such owners as to building, and the owners then sold the remainder of the estate to B., there being no reference in B.'s conveyance to such restrictive covenants, it was held that B. was not entitled to restrain A. from building in contravention of the covenant (*Renals v. Cowlishaw*, 11 Ch. D. 866). In fact, there was no intention on the part of the owners and B. at the time of entering into the contract that B. should have the benefit of A.'s restrictive covenants, and the principle on which restrictive covenants will be construed—particularly in the case where a number of purchasers buy plots on the same estate—seems to be the answer to the question, "What was the bargain between the parties concerned?" (*Harrison v. Good*, L. R., 11 Eq. 338; *McLean v. McKay*, L. R., 5 P. C. 327). A purchaser may lose his right to enforce a covenant by acquiescing in breaches (see "Covenants Generally," *ante*).

Covenants as to Deeds.—The absence of a legal covenant for production of deeds does not appear to be an objection to title (Vendors and Purchasers Act, 1874, s. 2).

Covenants for production of deeds should be examined, as they may give the purchaser notice of an incumbrance not abstracted (1 *Preston on Abstracts*, 153).

Covenants for production of deeds and the modern equivalent—acknowledgment for production and undertaking as to safe custody—run with the land.

There seems to be some doubt as to whether a trustee retaining deeds can be compelled to give an undertaking for safe custody, but the practice now seems to be tending in the direction of not asking him to give an undertaking. But, in opposition to this statement, see *Hood & Challis's Conveyancing Acts*, 1895 ed., 48. Their view is that previously to the passing of The Conveyancing Act, 1881, the practice was established that trustees ought, in the absence of express stipulation, to give both an acknowledgment and an undertaking (or the then equivalent covenant), and that, as the Act has made no alteration, the practice should continue. They further point out that *re Agg-Gardner* (25 Ch. D. 600), which is against their contention, was decided by Bacon, V. C., on special grounds.

A legal tenant for life is entitled to the custody of deeds as a matter of right (*Garner v. Hannyngton*, 22 Beav. 627).

An equitable tenant for life is, as a general rule, entitled to the custody of the title deeds, even though the legal estate be devised to the trustees (*re Bentley*, *Wade v. Wilson*, 54 L. J., Ch. 782; *re Burnaby's Settled Estates*, 61 L. T. 22; *in re Wythes*, *West v. Wythes*, 62 L. J., Ch. 663).

Generally, when land is held by several owners under a common title, he who can get possession of the deeds is entitled to keep them (*Foster v. Crabb*, 12 C. B. 136; 5 *Bythewood & Jarman*, 253). A vendor is entitled by The

Vendors and Purchasers Act, 1874, to retain deeds relating to property in which he has an interest (Section 2).

Miscellaneous.—On a conveyance for value subject to a mortgage, there is, in the absence of express agreement, an undertaking implied by law on the part of the purchaser that he will indemnify the vendor against personal liability (*Adair v. Carden*, 29 L. R. Ir. 469).

On the sale of a reversion, as the purchaser will have to pay the succession duty when it falls into possession, he should covenant to indemnify the purchaser against it (*5 Bythewood & Jarman*, 599, *note*).

As to a covenant not to assign without the lessor's consent not preventing a bequest by will, nor extending to an alienation by operation of law—*e.g.*, by bankruptcy, or by a judgment—and as to a lessor not being allowed to charge a fine for granting a licence (unless power expressly given by lease), see "Execution and Completion of Deed, Notice, &c.," Chapter VII., *post*.

As to covenants in restraint of alienation see "Wills Generally," "Conditions in Restraint of Alienation," Part III., Chapter I., *post*.

As to covenants in respect to roadmaking, paving, and sewering see "Parcels," Chapter IV., *ante*.

As to covenants implied from a recital see "Recitals," Chapter II., *ante*.

CHAPTER VII.

EXECUTION AND COMPLETION OF DEED, NOTICE, &c.

The better opinion seems to be that *signing* is not essential to the validity of a deed (see *Shep. Touch.* 60). Mr. Preston and Mr. Joshua Williams were of this opinion; also V. C. Leach (see *Taunton v. Pepler*, decided in 1820, Madd. & Geld. 166); also Mr. J. Maule (see *Aveline v. Whisson*, decided in 1842, 4 Man. & Gr. 801); also L. C. J. Denman (see *Cook v. Goodman*, also decided in 1842, 2 Q. B. Rep. 580); also Sir James Parke and Baron Alderson (see *Cherry v. Heming & Needham*, decided in 1849, 4 Exch. Rep. 631). The chief contra view was that of Sir William Blackstone, who was of opinion that the Statute of Frauds (29 Car. II. c. 3) applied to a deed.

Where the deed does not show any trace of a seal, the fact that it is stated in the attestation clause that the deed *was* sealed is not sufficient (*National Provincial Bank of England v. Jackson*, 33 Ch. D. 1).

A party who takes the benefit of a deed is bound by it though he does not execute it (*Webb v. Spicer*, L. R., 13 Q. B. 886; and see *Witham v. Vane*, 44 L. T. 718; *Dart's Vendors and Purchasers*, 897). See also "Covenants," Chapter VI., *ante*.

It is important to see that the purchaser has executed the deed where such deed contains a reservation of an easement, as such reservation is only good on the supposition that it operates as a re-grant to the vendor of the easement. If the deed be not executed by the purchaser, there

cannot be even a re-grant (*Corporation of London v. Riggs*, 13 Ch. D. 798; *Ellis v. The Manchester Carriage Co.*, L. R., 2 C. P. D. 13; *Wheeldon v. Burrows*, 12 Ch. D. 31).

A deed to which the execution has been obtained by fraud does not pass any estate, on the ground that the mind of the person executing does not go with the deed; and such deed is void even against a purchaser for value without notice (*Favel v. Wright*, 64 L. T. 85).

Where several deeds relating to the same transaction bear one date, they will be presumed to have been executed in the order that will enable the intention of the parties to be carried into effect, whether, as a matter of fact, they were executed at the same time or not (*Gartside v. Silkstone &c. Colliery Co.*, 21 Ch. D. 762; *Selwyn v. Selwyn*, 2 Burr. 1131).

Where a deed has been sealed by a building society, or by a company or corporation, the purchaser should see that such seal has been affixed in accordance with the rules of the society, or the articles of association of the company, or the incorporating Act of the corporation respectively (see *D'Arcy v. Tamar &c. Railway Co.*, L. R., 2 Ex. 158). But where the seal of a company had been affixed to a mortgage deed by the secretary of the company, it was held that it was not the duty of the second mortgagees (who disputed the first mortgage) to go behind the articles of association to ascertain whether he was duly authorised by the private regulations of the directors to affix it (*The County of Gloucester Bank Limited v. The Rudry Merthyr Steam &c. Colliery Co.*, *Law Times*, March 16, 1895).

In the case of an attorney executing under a power of attorney, the purchaser should ask for a copy of the power to enable him to ascertain that the execution of the deed is authorised thereby (*Danby v. Coutts*, 29 Ch. D. 500).

Before 1882 an attorney could only execute a deed in the name of the principal (unless the power were coupled with an interest), but since that date he has been able to execute the deed either in his own name or in the name of his principal (Conveyancing Act, 1881, s. 46).

Powers of attorney executed in a British colony before a notary public, or other officer authorised to administer oaths, were acted on by the Chancery paymaster without further authentication: therefore a purchaser may safely do the same. But elsewhere than in a British colony the seal or signature of the officer should itself be verified as the seal or signature of the person purporting to seal or sign (*Davis's Trusts*, L. R., 8 Eq. 98; and see 18 & 19 Vict. c. 42, s. 1; *Sweet's Concise Precedents*, 139).

As to the execution of a deed by an attorney on behalf of a company registered under the Companies Acts see The Companies Act, 1862, s. 55, and The Companies' Seals Act, 1864, s. 7.

Attestation is not essential to the validity of a deed unless it be prescribed by the terms of a power (3 *Preston on Abstracts*, 71), and if executed after 1859, attestation by two witnesses, even in that case, is sufficient (22 & 23 Vict. c. 35, s. 12).

Appointments of trustees of property conveyed for religious or educational purposes require two witnesses and to be in a special form (13 & 14 Vict. c. 28, s. 3; *Comyns' Abstracts*, 4th ed. [1884], 228).

It was stated in *Freshfield v. Reed* (9 M. & W. 404) that a party to a deed cannot attest it; but this would now be limited to the cases where attestation is still necessary. In fact it would seem that where attestation is not necessary, the execution can be proved by any person who was present and saw the execution.

The absence of an endorsed *receipt* before 1882 was

presumptive notice that the purchase money had not been paid, and imposed on a future purchaser the necessity of requiring evidence of the payment of the money (*Greenslade v. Dare*, 20 Beav. 284). The receipt in the body of a deed executed since the 31st December, 1881, is now conclusive evidence of payment in favour of a subsequent purchaser without notice (Conveyancing Act, 1881, s. 55; see also pp. 51 to 54). Upon a sale of superfluous lands under The Lands Clauses Consolidation Act, 1845, a receipt under the common seal of the undertaking, or the hands of two of the directors or managers of the undertaking acting by the authority of the body, is a sufficient discharge for the purchase money (8 & 9 Vict. c. 18, s. 131).

By The Yorkshire *Registry* Act, 1884, s. 14, since the 1st January, 1885, assurances have had priority according to the date of registration, and not according to the date of the deed or of its execution, except in the case of fraud. Section 15 of the 1884 Act provided that the registration of any instrument should be deemed to be actual notice of such instrument to all the world. This Section was repealed by Section 5 of the 1885 Act, which was not retrospective. It would appear that a purchaser, therefore, will still be deemed to have notice of all instruments registered between the 7th August, 1884, and the 16th July, 1885, the dates of the two Acts. In Middlesex (where registration is still governed by the old Act of 7 Anne, c. 20) notice of an unregistered conveyance may be binding in Equity (see *Rolland v. Hart*, L. R., 6 Ch. 678). The registration of an assignment of leaseholds containing, even in the memorial, a recital of the lease, will not cure the non-registration of the lease (*Honeycomb v. Waldron*, 2 Str. 1064). A further charge requires registration (*Wright's Mortgage Trust*, L. R., 16 Eq. 41). Land registered under The Land Registry Act, 1862, or The Land Transfer Act, 1875, is exempt

from registration under the Middlesex and Yorkshire Registry Acts.

Where the property is in Middlesex or Yorkshire, the purchaser should see that the certificate of appointment of a trustee in bankruptcy is registered (Bankruptcy Act, 1883, s. 54).

An agreement for the sale and purchase of land is not an "assurance" within The Yorkshire Registry Act, 1884, and cannot therefore be registered (*Rodger v. Harrison*, 68 L. T. 66).

An *assignment* for the benefit of creditors must be stamped and registered within seven days after its first execution: otherwise, it will be void (50 & 51 Vict. c. 57, s. 5). The deed should also be registered under The Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 5, ss. 7 to 9).

In the case of a disentailing deed, the purchaser should see that it has been enrolled in Chancery within six months, as otherwise the deed would only pass an estate for life (*Morgan v. Morgan*, L. R., 10 Eq. 99). The purchaser should also see that the consent of the protector (if given by a separate deed) was enrolled with or before the assurance, as otherwise it will be void (3 & 4 Will. IV. c. 74, s. 46).

The purchaser should see that the deed has been *acknowledged* by a married woman where necessary (see "Parties, Married Women," Chapter I., *ante*).

As to *searches* see the law conveniently summarised in 1 *Prideaux*, 15th ed., 122 to 158; see also *Dart's Vendors and Purchasers*, Chapter XI.

A purchaser is not entitled (in the absence of a condition to the contrary) to the benefit of an existing *insurance* (*Poole v. Adams*, 12 W. R. 683). Should the vendor receive the policy moneys, they can be required back from him by the office, unless he make a corresponding allowance

out of the purchase money to the purchaser (*Castellain v. Preston*, 11 Q. B. D. 380; *Hood & Challis's Conveyancing Acts*, 1895 ed., p. 86).

Notice and Consent.

The purchaser should satisfy himself that any necessary consent or notice has been obtained or given.

The better opinion seems to be that a covenant not to assign or underlet without the lessor's consent will not prevent a bequest by will (*Doe d. Beavan*, 3 M. & S. 353). Nor will such a covenant prevent an alienation by operation of law—*e.g.*, by bankruptcy, or by a judgment—and therefore a trustee in bankruptcy may assign in the discharge of his duty without such assignment being a breach of the covenant (*Doe d. Beavan*, above; 2 *Prideaux: Dissertation on Leases; Woodfall*, 630, 631; see also the recent cases of *re Johnson, ex parte Blackett*, 70 L. T. 381; and *White v. Hay*, *Law Times*, March 16, 1895). In a covenant not to assign without consent, the words "such consent not being arbitrarily withheld" enable the lessee, in case of an arbitrary refusal, to assign without consent (*Treloar v. Bigge*, 43 L. J., Ex. 95; *Woodfall*, 628; *Barrow v. Isaacs* [1891], 1 Q. B. 417). No fine must be exacted by a lessor as a condition of giving a licence to assign unless the instrument expressly so provides. This does not preclude the right to require a reasonable sum for legal or other expenses (Conveyancing Act, 1892, s. 3). The consent of a lessor to an assignment extends only to the consent actually given (22 & 23 Vict. c. 35, s. 1).

A lease granted by trustees of a charity without the assent of the Charity Commissioners is void (*Bangor* [*Bishop*] *v. Parry*, 65 L. T. 379).

The notice required to be given to a mortgagor before exercising the power of sale given by The Conveyancing

Act, 1881, may be waived by the person entitled to receive it (*re Thompson and Holt*, 44 Ch. D. 492).

When one of two trustees has received notice of an assignment of an interest under a will, and dies, a person taking an assignment after his death, and giving notice of it to the other trustee, has priority over the assignment earlier in date. But where one only of two trustees has notice of the assignment, and a second assignment is made, of which both trustees receive notice, the subsequent death of the trustee who alone had notice of the prior assignment does not alter the priority obtained by the first assignee (*Ward v. Duncombe*, 69 L. T. 121 ; see also *in re Wyatt-White and Ellis*, 65 L. T. 841).

Trustees are not under any legal obligation to answer inquiries put to them as to existing incumbrances (*Low v. Bouverie*, 65 L. T. 533).

Trustees of a settlement of real estate were empowered to sell with the consent of the tenant for life. The tenant for life was bankrupt, and had incumbered his life estate. *Held*, That the concurrence of the incumbrancers and the trustee in bankruptcy was essential to make a title (*in re Bedingfield and Herring*, 68 L. T. 634).

As to when it is necessary for a trustee for sale to obtain the consent of the tenant for life previous to sale see "Wills, Power of Trustees &c. to Sell," Part III., Chapter III., *post*.

As to assent of executor to devise of leaseholds see "Parties, Devisee of Leaseholds," Chapter I., *ante*.

As to notice to trustees previous to exercising powers of The Settled Land Acts, 1882 to 1890, see "Parties, Life Tenant," Chapter I., *ante*.

The Effect of Constructive Notice.

Notice of a deed is notice of its contents, unless inspection of the deed could not be obtained (*Patman v. Harland*,

17 Ch. D. 353). A purchaser is deemed to have notice of the contents of a lease, unless the covenants are of an unusual character and the purchaser has not had a reasonable opportunity of inspecting same (*Reeve v. Berridge*, 20 Q. B. D. 523).

A purchaser who does not investigate a title is affected with notice of what he would have learned by investigation, as such neglect tends to promote fraud (*Worthington v. Morgan*, 16 Sim. 547); but not of matters which he could not have learned without inquiring into the truth of recitals contained in the documents of title, or otherwise going behind the documents themselves (*Dunning v. Earl of Gainsborough*, 54 L. J., Ch. 991).

A purchaser is not affected by notice of any instrument, fact, or thing, unless (1) it is within his own knowledge or (2) would have come to his knowledge if he had made such inquiries and inspections as he ought reasonably to have made; or (3) unless in the same transaction it has or ought to have come to the knowledge of his solicitor &c. (Conveyancing Act, 1882, s. 3). In *Saffron Waldon Building Society v. Rayner* (14 Ch. D. 406) the Court of Appeal strongly discountenanced the view that there is such a thing as a permanent office of solicitor, or that a solicitor who happens to be in the habit of acting for a person is his agent, so as to bind him by receiving notices or information.

Notice by a solicitor for a mortgagee of a document is not necessarily notice to the mortgagee of the *contents* of the document (*English & Scottish Mercantile Investment Trust v. Brunton*, 66 L. T. 767).

There can be no acquiescence arising from constructive notice (*Wilmott v. Barber*, 15 Ch. D. 96).

CHAPTER VIII.

STAMPS.

This chapter has been compiled almost entirely from Mr. Alpe's *Law of Stamp Duties* [1894], 4th edition, to which the reader is referred for fuller information.

Under an open contract the vendor should stamp all deeds at his own expense, including even a discharged mortgage (*Whiting & Loames*, 17 Ch. D. 10; *Ex parte Birkbeck Freehold Land Society*, 24 Ch. D. 119).

Unless an instrument is stamped for its leading and principal object, it cannot be given in evidence for any subordinate object (*Limmer Asphalte Co. v. Commissioners*, 41 L. J., Ex. 106). But if an instrument is stamped for its leading object, the stamp covers everything accessory to that object (*idem; Alpe*, 3).

An escrow is not an executed instrument for the purposes of the stamp laws. The date of delivery is taken as the date of execution (*Alpe*, 42).

As regards an instrument that has been lost or destroyed, there is a presumption that it was duly stamped, unless some evidence is given to the contrary, and the onus of proving it to have been unstamped lies on the party taking the objection; but if evidence is given that it was unstamped at a particular time the onus of proof is shifted, and the party who relies on the unstamped document must prove it to have been duly stamped (*Marine Investment Co. v. Haviside*, 42 L. J., Ch. 173; *Alpe*, 37). The same rule applies to an instrument retained by the opposite party after notice to produce (*Crowther v. Solomons*, 6 C. B. 758).

The vendor must stamp any unstamped deeds executed after the 16th May, 1888, notwithstanding any stipulation to the contrary (Stamp Act, 1891, s. 117).

Where a deed is altered with the consent of the parties after execution so as to form a new contract between the parties, a new stamp is required (*Cole v. Parkin*, 12 East. 47; *London, Brighton & South Coast Railway Co. v. Banclough*, 2 M. & G. 675).

The consent of a lessor does not require a stamp (*Hill v. Ransom*, 12 L. J., C. P. 275), unless under seal, when a ten-shilling stamp is necessary (*Alpe*, 105).

A record upon minutes of the election or appointment of a trustee by resolution at a meeting is not chargeable with duty (*Alpe*, 63).

Powers of attorney and notarial acts executed abroad are liable to British stamp duty if acted upon in this country. The certificate of a notary public as to the due execution of a deed requires a shilling stamp (*Alpe*, 35).

A deed or order appointing new trustees, as well as vesting the estate in them, requires two ten-shilling stamps (*Hadgett v. Commissioners*, 37 L. T. 612). The appointment of a trustee for the purposes of the Settled Land Acts is not chargeable with duty (*Alpe*, 63).

A deed of discharge of a trustee retiring under Section 32 of The Conveyancing Act, 1881, containing also the consent to the vesting of the trust property in the continuing trustee, is liable to one ten-shilling stamp only; but if it operates to vest the property in the continuing trustee it is liable to two ten-shilling stamps, upon the authority of *Hadgett v. Commissioners* (37 L. T. 612; *Alpe*, 63).

Where an instrument operates as several conveyances, separate duties are required: for instance, a conveyance by executors to four residuary legatees, to hold to them

respectively, was held liable to four stamps (*Freeman v. Commissioners*, 6 Ex. 101).

As fixtures and standing timber pass by a conveyance without mention, the amount of the valuation thereof must be included in the consideration, and duty paid thereon (*Dart's Vendors and Purchasers*, 6th ed., 606; *Alpe*, 106).

In the conveyance of an equity of redemption, the amount owing on the mortgage for principal *and interest* to the date of conveyance must be included in the consideration, unless interest to date be paid by the vendor (*Alpe*, 111). In a conveyance of property subject to a mortgage to a building society, the amount for which the mortgage could be redeemed by immediate payment is the amount to be included in the consideration (*Alpe*, 112).

An order for foreclosure is not chargeable with conveyance duty, nor is a conveyance by a person appointed to convey to an equitable mortgagee in an action for foreclosure (*Alpe*, 112).

If a legal estate is outstanding in a stranger to the transaction of purchase and sale, and the person in whom it is vested joins in the conveyance, it will be chargeable as an instrument relating to several distinct matters—*i.e.*, if the outstanding estate is that of a mortgagee, with ad valorem reconveyance duty in addition to the ad valorem conveyance duty on the consideration moving from the purchaser; if that of a trustee or other person, with a ten-shilling stamp in addition to ad valorem duty (*Alpe*, 108).

Where a person, having contracted for the purchase of property, but not having obtained a conveyance, contracts to sell the same to any other person, the conveyance is to be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser (Stamp Act, 1891, s. 58, s.s. 4).

A contract under the seal of a company or corporation is liable to a duty of 10s. (*Commissioners v. Angus & Co., Limited*, L. R., 23 Q. B. D. 579; *Alpe*, 132).

As to stamping an exchange or partition deed see Stamp Act, 1891, s. 73.

An equitable mortgage framed with the object of placing the equitable mortgagee in as good, or nearly as good, a position as if he had taken a legal mortgage—*e.g.*, by giving him a power of sale, or declaring that he is to have the powers conferred upon mortgagees by The Conveyancing Act, 1881, or otherwise going beyond the character of the instrument defined as an equitable mortgage—is by Section 86, Sub-section 2, of The Stamp Act, 1891, chargeable with the duty of 2s. 6d. per £100 (*Alpe*, ~~171~~).

Sometimes a builder builds a house without taking a lease, and when he has sold the house gets the owner of the land to grant the lease direct to the purchaser. Such a lease should be stamped as a conveyance (*Alpe*, 141).

A lease containing an option to purchase does not require any extra stamp (*Worthington v. Warrington*, 17 L. J., C. P. 117; *Alpe*, 143).

Interest in arrear must be included in the amount on which transfer of mortgage duty is paid.

A mere receipt on an equitable mortgage is not liable to reconveyance duty, but if it contains any such words as "in full discharge," it is liable as being a "discharge" (*Alpe*, 166).

A deed which is in effect a transfer is not chargeable with mortgage duty only, because a new proviso for redemption is substituted for the old one (*Wale v. Commissioners of Inland Revenue*, 4 Ex. D. 270).

Deeds and documents in relation to the property of a bankrupt, which is, or remains, the estate of a bankrupt, are exempt from stamp duty (Bankruptcy Act, 1883, s. 144).

But a deed of conveyance upon a sale by the trustee of the bankrupt's estate is liable to ad valorem duty (*Alpe*, 242).

An order of the Court under Section 55 of The Bankruptcy Act, 1883, for the vesting of disclaimed property in the person entitled thereto is exempt from duty (*Alpe*, 242 and 243).

A power of attorney or agreement under The Copyhold Act, 1894, is exempt from stamp duty (Section 58).

Sometimes the vendor's solicitor offers to give an undertaking to pay the penalty if at any time it should become necessary to stamp the deed. Such an undertaking could not be enforced, as being against the policy of the Stamp Acts (*Abbott v. Stretton*, 3 J. & L. 616; *Alpe*, 210).

The effect of the circular of the Commissioners of Inland Revenue, dated 20th February, 1895, offering, at any time hereafter, without charge or penalty, to stamp conveyances of land, in which conveyances rent charges are apportioned, or assignments of leaseholds in which assignments the ground rent is apportioned, when such deeds are dated before 1st January, 1895, is practically to render such documents exempt from further duty, and a purchaser may generally waive his strict right to require vendors of property to stamp such deeds.

It would seem to be very generally doubted whether the view of the authorities that duty should be paid on the apportioned rent charge, or ground rent, can be supported.

PART III.

CHAPTER I.

WILLS GENERALLY.

An *infant* cannot make a will (1 Vict. c. 26, s. 7), except a soldier or sailor in certain circumstances (Section 11).

A *joint tenant* cannot devise his share.

A *married woman* can dispose by will of the legal and equitable estate in her freehold property, if separate property under The Married Women's Property Act, 1882. As to her separate property other than that under this Act, she can devise the equitable estate therein (*Taylor v. Meads*, 4 De G. J. & S. 597), but she cannot pass the legal estate therein, although such legal estate is vested in her (*Hall v. Waterhouse*, 6 N. R. 20). But where she has both the legal and equitable estate, and devises the equitable estate, the heir would be a trustee of the legal estate for her devisee (*Hall v. Waterhouse, supra*). As to freeholds not held by her for her separate use, she has no power to devise them by will (except under a power), and a renunciation of marital rights, signed by the husband, would not be a good declaration to create a separate use, for the property would not be his to declare a trust upon (*Godefroi's Law of Trusts*, 1891 ed., 551). She can exercise a power of appointment affecting freeholds not held for her separate use, conferred by a previous settlement or will, and she can appoint an

executor to continue the personal representation of a testator, of whose will she is herself the sole or surviving executrix (*Shep. Touch.* 402; *re Herbert's Will*, 8 W. R. 272). As to leaseholds, she can bequeath them, although not held for her separate use, provided her husband gives his consent to her doing so (*R. v. Bettesworth*, Str. 891), and if he survives her, either expressly repeats his assent (*Maas v. Sheffield*, 1 Rob. 364), or does not revoke it before her will is proved. But if he has once assented after his wife's death, he cannot revoke his assent (*Maas v. Sheffield*, *supra*).

The Married Women's Property Act, 1893, provides that the will of a married woman shall speak from her death, although she had no separate property at the time of making it, and such will shall not require to be re-executed after the death of her husband (Section 3).

Proof that Last Will.—If the will relates only to realty, and has not on this account been proved, the purchaser should ask for a statutory declaration that it is the last will.

He should also ask for the original will to be handed over, unless it relates to other property, or unless the executor has still some duties to perform thereunder, in which cases he should ask for an acknowledgment of his right to production thereof.

Incorporation of a Document in a Will.—To enable a document to be effectually incorporated in a will there must be—(1) A reference in the will to the document as *existing* (*re Sunderland*, L. R., 1 Prob. 198); (2) Proof that the document was written *before* the will was made (*Allen v. Maddock*, 31 L. T. 359); and (3) Proof of identity of the document (*Utterton v. Robins*, 1 A. & E. 423). And, generally, see the summary of authorities in *Williams on Executors* (9th ed., 86), also *Durham v. Northen* (69 L. T. 691), and *re Garnett deceased* (70 L. T. 37).

Witnesses.—Where the vendors are specific devisees, the purchaser should see that neither they nor their husbands or wives are witnesses (1 Vict. c. 26, s. 15). But the fact of such a person attesting a codicil to the will does not prevent him or her taking a gift under the will (*Gurney v. Gurney*, 3 Drew, 208; *Tempest v. Tempest*, 7 De G. M. & G. 470); nor will the fact of a witness, subsequently to the will, marrying a person who takes a benefit under it, affect the validity of the devise (*Thorpe v. Bestwick*, L. R., 6 Q. B. D. 311). So a gift in a will which is bad may be made good by a confirmation in a codicil attested by different witnesses (*Anderson v. Anderson*, L. R., 13 Eq. 381).

Where there is a gift to several as joint tenants, one of whom is an attesting witness, and thereby forfeits his interest, the Statute does not create a severance of the joint tenancy, but the whole gift goes to the others (*Young v. Davies*, 2 Dr. & S. 167). A devise to a witness to be void must be beneficial, so that in a gift of property upon trust the gift is not void (*Creswell v. Creswell*, L. R., 6 Eq. 69).

If the will is not witnessed by a solicitor, the purchaser should endeavour to ascertain whether the will was really properly executed. If a witness cannot write, and his name is written for him, he having no mark to be afterwards recognised upon the will, the attestation is bad (*in re Cope*, 2 Rob. 335).

Revocation.—The purchaser should see that the will has not been revoked by a subsequent marriage (1 Vict. c. 26, s. 18). In certain cases an execution by will of a power of appointment is not revoked by marriage (*idem*).

The mere fact that there are *two* wills in existence, and that the second begins, "This is the last will," &c., but contains no revocation clause, will not effect a revocation

of the prior will (*re Petchall*, 30 L. T. 74; *re Sarah Radcliffe deceased*, 65 L. T. 165). Neither will the fact of the testator drawing his pen through the body of the will, the signature, the attestation clause, and the names of the witnesses, effect a revocation, as the Wills Act does not refer to "cancellation" as a means of revoking a will (*re Brewster*, 29 L. J., Prob. 70; *Cheese v. Lovejoy*, 37 L. T. 294); nor scratching with a knife, unless carried by the testator to the extent of rendering his signature illegible (*re Godfrey deceased*, 69 L. T. 22).

A Will operates from the date of the death of the testator, unless a contrary intention can be gathered from it (1 Vict. c. 26, s. 24). The provisions of this Act are now extended to the will of a married woman (Married Women's Property Act, 1893, s. 3). The use in the will of the word "now" will not alone be deemed to refer to the date of the will (*Wagstaffe v. Wagstaffe*, L. R., 8 Eq. 229; *Castle v. Fox*, L. R., 11 Eq. 542; but see *Cave v. Harris*, 57 L. J., Ch. 62). The will of a testator who afterwards becomes a lunatic will speak from its date, and not from the date of testator's death (*Wheeler v. Thomas*, 7 Jur. 599; *Miles v. Miles*, L. R., 1 Eq. 462).

Perpetuities.—The rule is that a bequest or devise is void for remoteness, if it shall not, *of necessity*, take effect within the period of a life or lives in being at the testator's death and twenty-one years afterwards, except a limitation to take effect after an estate tail. If the limitation is too remote in its creation, it cannot become good, even though the event should happen within the prescribed period (*Hayes & Jar. Forms of Wills* [1893], 10th ed., 289 to 291). When a limitation is too remote, all limitations in remainder are also void (*re Bence*, L. R. [1891], 3 Ch. 242).

The purchaser should particularly be on his guard against such ultimate remainders as the following, which,

it is believed, are not uncommon: viz., a gift to E. for life, and, after her decease, to the use of any surviving husband with remainder to the use of all the children of E. who should be living at the death of the survivor. In this case, the ultimate remainder would be void on the ground that E. might marry a person unborn at the testator's death (*re Frost, Frost v. Frost*, 43 Ch. D. 246).

In reference to powers and the rule against perpetuities, the purchaser should consider whether the power is a *special* or a *general* power. The donee of a special power can only limit the property in the same manner as the donor could have done, and the rule against perpetuities begins to run from the date of the instrument creating, and not of the instrument executing the special power.

But in the case of a general power, the rule against perpetuities begins to run from the date of the instrument *executing* the power (*in re Powell's Trusts*, 39 L. J., Ch. 188; *Hayes & Jarman's Forms of Wills*, 295).

The property included in a void limitation would pass under the residuary devise (1 Vict. c. 26, s. 25); but if there be no residuary devise, then to the heir-at-law or the next-of-kin, according to the nature of the property at the death.

See further, as to powers of appointment, pp. 12 to 14.

Conditions in Restraint of Alienation.—The numerous decisions in reference to what is and what is not a restraint on alienation may give rise to confusion in the mind of the conveyancer unless the main principle underlying them is clearly borne in mind. It may be said generally that trusts and conditions which attempt to restrain the power of alienation inherent in the right of property (except restraints in favour of a married woman) are void (*re Jones*, 23 L. T. 211). But the question arises as to what *is* an attempt to restrain the power of alienation. If an *absolute*

interest (whether in fee, for life, or for any other interest) is given in the first instance, restrictions upon its enjoyment are illegal and void (*re Machu*, 21 Ch. D. 842; *Dugdale v. Dugdale*, 38 Ch. D. 176, 179; *Metcalfe v. Metcalfe*, 43 Ch. D. 633). For instance, a gift to a man for life, with a proviso that he shall not sell or alienate it: here, the proviso is void, because an absolute interest for life has in the first instance been given, and the proviso is an attempt to restrain the power of dealing with this interest. So also, for the same reason, where a gift is made to a man for life with a discretionary power to trustees to apply the income for his maintenance after bankruptcy, the man can deal with his estate as if the trust had not been imposed (*Younghusband v. Gisborne*, 1 Coll. 400). But a trust for a man *until* he shall become bankrupt, and after his bankruptcy to others, is perfectly good, as the only estate given to him is an estate until he shall become bankrupt (*Knight v. Browne*, 30 L. J., Ch. 649; *Metcalfe v. Metcalfe*, *ante*).

It does not seem to be necessary to the validity of conditions of this kind that there should be a gift over; a proviso for cesser being sufficient (*Rochford v. Hackman*, 9 Hare, 481).

Conditions which impose only *partial* restraints on the right to alienate are valid. For instance, a condition not to sell to anyone out of the family (*re Macleay*, L. R., 20 Eq. 186); though a condition to give another the option of purchasing at a particular price would be bad (*Rosher v. Rosher*, 26 Ch. D. 801; see also the cases collected in *Godefroi's Law of Trusts*, 1891 ed., 775 to 785).

Section 51 (1) of The Settled Land Act, 1882, provides that any provision in a will or settlement which has the effect of forbidding a tenant for life from exercising any power under the Act shall be void. Where the effect of a disposition of property was made in such a way that the

beneficiary was to have the benefit of the disposition if he did not alienate, but would lose that benefit if he did, *Held*, That the provision against alienation was void (*in re Ames, Ames v. Ames* [1893], 2 Ch. 479).

Specific Devise.—Where the devise is specific the purchaser should see that the property purchased comes strictly within the description contained in the will. The rule is that if all the words of description in the will are true, and correctly describe the property, the Court will not presume that there is any error, so as to extend the meaning of the words to something not properly comprehended in the express words (*Barber v. Wood*, 4 Ch. D. 885; *Webber v. Stanley*, 10 L. T. 417; *Tapley v. Eagleton*, 12 Ch. D. 683; *re Bright-Smith*, 31 Ch. D. 314; and *re Seal, Seal v. Taylor*, 70 L. T. 329).

Both the word "estate" and the word "property" used alone will be sufficient to carry both real and personal estate; but the context may control the meaning. Thus, if the gift of the estate is to trustees on trusts exclusively applicable to personal property, real property will not pass (*Coard v. Henderson*, 24 L. J., Ch. 388; *Lloyd v. Lloyd*, L. R., 7 Eq. 458).

The word "effects" *primâ facie* refers to personal estate; yet taken into effect with other expressions in the will it may pass real estate (*Hall v. Hall*, 66 L. T. 206).

Leaseholds will not pass under a devise of real estate described generally (*Butler v. Butler*, 28 Ch. D. 66; see also *in re Bright-Smith*, 31 Ch. D. 314).

An appointment by a testator of a person in his will to be his residuary legatee will not carry freeholds to him without a devise (*Morris v. Atherden*, 71 L. T. 179).

A devise to sons and daughters of an equal share in all the income of real property was held to pass the fee (*Mannox v. Greener*, L. R., 14 Eq. 456).

A bequest of "moneys on mortgage" will pass the legal estate in the property on which the moneys are secured (*Doe d. Guest v. Bennett*, 6 Ex. 892); but not "money on securities" (*re Cautley*, 17 Jur. 124; *Hawkins on Wills*, 49).

As to leaseholds, the assent of the executor is necessary to perfect the title of the devisee, and until such assent is given nothing passes to the legatee (3 *Preston on Abstracts*, 144, 145; see also "Witnesses," *ante*).

A covenant in a lease not to assign without the lessor's consent will not, according to the better opinion, prevent a devise by will (*Doe d. Godbehere v. Bevan*, 3 M. & S. 353; *Woodfall*, 631).

Registration.—If freehold property is in Yorkshire or Middlesex, and the purchase is completed within six months of the death of the testator, it is essential that the will should be registered. But if more than six months have elapsed since the testator's death, and the purchaser has satisfied himself that there is no affidavit of intestacy or assurance registered by the heir, registration may be waived; but the purchaser can insist on the will being registered if he thinks fit. For a devisee has, by the Registry Acts, six months in which to register a will of freeholds, and if registered within that time it has priority as if it were registered at the date of the death. After that time a conveyance for value from the devisee, if registered before a conveyance from the heir, prevails over the latter (Vendors and Purchasers Act, 1874, s. 8). A purchaser of *leaseholds* cannot ask for a will to be registered.

It may be mentioned here that on a purchase from an heir-at-law of freehold property in Yorkshire, the purchaser should, if possible, not complete the sale until after six months from the death. An heir-at-law can, after six months from the death have elapsed, but not before,

register an affidavit of intestacy, and when this has been registered, an assurance for valuable consideration from the heir, duly registered, will have priority over any will of the supposed intestate not then registered (Yorkshire Registry Act, 1884, s. 12).

The Registry Acts do not apply to a devise of copyholds. See also pp. 23 and 24.

Miscellaneous.—The absence of a date will not invalidate a will (*Sugden's Real Property Statutes*, 329).

Where two clauses or gifts are inconsistent or contradictory, that clause or gift which comes last will prevail. This rule is subject to the doctrine that the testator's intention is to be gathered from the general tenor of the will, and the rule is only applied when a reconciliation of the clauses or gifts is quite impossible (*Hayes & Jarman's Forms of Wills*, 408).

Parentheses, stops, capital letters, &c., may be taken into consideration in construing a will (*Hawkins on Wills*, 7).

An agreement for valuable consideration to leave property by will may be enforced (*Coles v. Pilkington*, L. R.; 19 Eq. 174).

Copyholds.—See "Copyholds," Part IV., *post.*

Root of Title.—As to Will Commencing Title see p. 10.

CHAPTER II.

DEVOLUTION OF ESTATES ON DEATH.

Trust and Mortgage Estates of Inheritance before 1882.—Such estates passed under the will of the trustee or mortgagee. A general devise would pass them, unless an intention could be gathered from the will that the devise was intended to be confined to beneficial interests (*Braybrooke v. Inskip*, 8 Ves. 417; *Tudor's Leading Cases R. P.*). The purchaser should see that "assigns" was mentioned in the trust or mortgage: otherwise the devisee could not execute the trust or power of sale (*re Morton and Hallett*, 15 Ch. D. 143; *re Cunningham and Frayling* [1891], 2 Ch. 567).

Trust and mortgage estates not disposed of by will descended like beneficial interests to the heir. Here, again, it should be seen that the "heir" was mentioned in the trust or mortgage to enable him to execute the trust or power of sale (*Cooke v. Crawford*, 13 Sc. 91).

Exceptions.—The estate of a bare trustee dying between August 7th, 1874, and December 31st, 1875, did not pass by a devise, but passed to his personal representatives (Vendors and Purchasers Act, 1874, s. 5). This Section was repealed by The Land Transfer Act, 1875, except as to anything done in pursuance thereof before January 1st, 1876; and the effect of Section 48 of the latter Act was that the estate of a bare trustee dying between January 1st, 1876, and December 31st, 1881, on his death intestate vested in his personal representatives. This Act is now repealed by The Conveyancing Act, 1881, in cases where death takes place after 1881.

The estate vested in a mortgagee dying between August 7th, 1874, and December 31st, 1881, could be passed by his personal representative by virtue of Section 4 of The Vendors and Purchasers Act, 1874. But he could only re-convey: that is, he could not exercise the power of sale or transfer the mortgage (*re White*, 29 W. R. 820; *re Spradberry*, 14 Ch. D. 514).

After 1881.—Trust and mortgaged estates of inheritance vested in a sole trustee or mortgagee now pass to his personal representative notwithstanding a devise (Conveyancing Act, 1881, s. 30).

This rule applied to copyholds from 1882 to September, 1887. Since the latter date they pass to the devisee, or heir, as the case may be (Copyhold Act, 1887, s. 45; *re Mills*, 37 Ch. D. 312).

The possibility of the last surviving trustee dying without having appointed an executor does not seem to have been provided for by Section 30 of The Conveyancing Act, 1881. In such a case the personal representative of the deceased, when appointed, would be an administrator, whose title does not relate back. In this case the old law would still apply: that is, the estate would vest in the heir-at-law, or devisee, as the case might be; but if such "heir" or "assign" was not mentioned in the trust or power, he could not exercise it, and it would be necessary to apply to the Court for the appointment of new trustees under the Trustee Act (*re Ingleby and Norwich Insurance Co.*, 13 L. R. Ir. 326; *Dart's Vendors and Purchasers*, 684; *Godefroi's Law of Trusts*, 36). But query whether on the appointment of an administrator the estate would not pass from the heir or devisee to such administrator.

Trust and mortgaged estates vested in an infant cannot be passed except by a vesting order (Trustee Act, 1893, ss. 26 and 28; *Rudall & Greig's Trustee Act, 1893*, 102, 108).

Freeholds vested in a married woman as a bare trustee may be conveyed by her as if she were a *feme sole* (Trustee Act, 1893, s. 16, re-enacting Section 6 of The Vendors and Purchasers Act, 1874, that Section being repealed by the 1893 Act; *Rudall & Greig's Trustee Act, 1893*, 74), and without acknowledgment (*Dockwra v. Faith*, 29 Ch. D. 693).

Devolution of Leaseholds on Death of Personal Representative.—On renunciation or death of executor without proving the will, the representation devolves as if he had not been appointed (20 & 21 Vict. c. 77, s. 79; 21 & 22 Vict. c. 95, s. 16; *Wyman v. Carter*, L. R., 12 Eq. 309). On the death of the executor after proving, leaseholds vest in *his* executor; but if he die intestate, administration *de bonis non* must be taken out in respect of the estate of the original testator, unless the executor be also trustee and has assented to the bequest, in which case the leaseholds would pass to the trustee's own personal representatives (*Lewin on Trusts*, 223). On the death of an administrator, an administrator *de bonis non* to the intestate's estate must be appointed to make a good title to the leaseholds.

Leaseholds on intestacy pass to an administrator on administration being granted, but the next-of-kin do not acquire the estate without an assignment (*Burton*, 311).

Legal Estate in Trustees.—Even where the legal estate is devised to trustees, they take only so much thereof as the purposes of the trust require (*Spence v. Spence*, 12 C. B., N. S. 199; *Marshall v. Gingell*, 21 Ch. D. 796). The principle underlying the cases is that the Court will execute the uses, not by force of the Statute of Uses, but by giving the legal estate to the trustee or beneficiary, according to what the Court sees to have been the intention of the testator (*Richardson v. Harrison*, L. R., 16 Q. B. D. 108): for instance, where the will directs that the tenant for life may be "permitted" or "suffered" to receive the rents, or the

direction is to "pay to or permit" another to receive the rents, this draws the legal estate to the tenant for life (*Baker v. White*, L. R., 20 Eq. 166; *Tudball v. Medlicott*, 36 W. R. 886; *Davies to Jones & Evans*, 24 Ch. D. 190). Of course there may be subsequent trusts in such a case, which may, after the death of the tenant for life, have the effect of vesting the legal estate in the trustees. It seems, however, that the doctrine of a use limited upon a use, applies to wills, and that where such a double use occurs, the legal estate becomes vested in the person who takes the first use, though he be only a trustee without any effective duties to perform (2 *Jarman's Wills*, 4th ed., 290; *Challis on Real Property*, 354). But if the trustee has active duties to perform, or where for the purposes of the trust it is requisite that he should have dominion over the property, he will take the legal estate, although it is not devised to him (*Rackham v. Siddall*, 1 McN. & G. 607): for instance, where the trust is to "pay" the rents to another for life, and in all cases where it is intended that the trustee shall, in the first instance, receive the rents, the trustee takes the legal estate, as otherwise he could not compel the payment of the rents (*Doe v. Homfray*, 6 A. & E. 206; *Gregory v. Henderson*, 4 Taunt. 772; *Baker v. White*, L. R., 20 Eq. 166).

A direction to trustees to pay debts will pass the fee to them on the same principle (*Creaton v. Creaton*, 2 Sm. & G. 386). But a direction to pay debts will not pass the fee if the words of the will show a clear intention to limit the legal estate to the duration of the life interest (*Doe v. Claridge*, 6 C. B. 641). In the case of annuities charged upon the land itself, as distinguished from the income arising from it, the trustees take the legal estate, as they may require the fee for the purpose of sale or mortgage to raise the annuity (*Whittemore v. Whittemore*, 38 L. J., Ch. 17). A general

power to lease or to take surrenders of leases also implies that the trustees are to have the legal fee (*Collier v. Walters*, L. R., 17 Eq. 252; *Blagrave v. Blagrave*, L. R., 4 Ex. 550). They also take the legal estate when they are given a power of sale, as it is implied that the testator intended to put them into a position to exercise such power (*Watson v. Pearson*, L. R., 2 Exch. 581; *Rackham v. Siddall*, 1 McN. & G. 607). They retain the legal fee so acquired if the estate is not exhausted by the sale (*Doe v. Edlin*, 4 A. & E. 582; *Gibson v. Bott*, 7 Ves. 95). See the cases collected in *Godefroi's Law of Trusts*, 10 to 21; see also Sections 30 and 31 of The Wills Act, 1837, which are, however, somewhat inconsistent with each other. Section 30 enacts that the whole estate of the testator shall pass to the trustee, unless a less estate is given by the will; and Section 31, that where no beneficial life estate is given, or, if given, the trusts require the trustee to have the fee beyond the life estate, the trustee shall have the whole legal estate, and not an estate determinable when the purposes of the trust shall be satisfied.

The construction which has been put by the text writers on these contradictory enactments is that they mean that unless the will itself points out in express terms the estate which trustees are to take, they take either an estate for the life of their *cestui que trust* or an estate in fee; or, in other words, if the trusts cannot be satisfied during the life of the *cestui que trust*, the fee passes to them (2 *Jarm. Wills*, 320; *Hawkins*, 156; *Lewin*, 220; *Theobald*, 326; *Godefroi*, 20).

The disclaimer of one trustee of real estate has the effect of causing the legal estate and powers to vest in the remaining trustees; but the disclaimer of all the trustees of real property has the effect of causing the legal estate to devolve upon the heir-at-law, who cannot disclaim it (*re Roberts, Roberts v. Gordon*, 6 Ch. D. 531; and see *Woods v. Hyde*, 31 L. J., Ch. 295). But such heir cannot execute

any trust which involves a discretion, such as a trust for sale (*Robson v. Flight*, 4 De G. J. & S. 608).

Where all the trustees named by a testator predecease him, the legal personal representative of the last survivor has not power, under Section 31 of The Conveyancing Act, 1881, to appoint new trustees (*Nicholson v. Field*, 69 L. T. 299). This Section is now replaced by Section 10 of The Trustee Act, 1893.

As to the effect of a specific devise by a testator of freehold land when he afterwards enters into a binding contract to sell the same and dies, see p. 6.

The bankruptcy of a trustee has not the effect of divesting him of the legal estate (Bankruptcy Act, 1883, s. 44).

No vesting declaration is necessary as to equitable interests on appointment of new trustees, as the appointment itself vests such interests (see Trustee Act, 1893, s. 12; *Rudall & Greig's Trustee Act, 1893*, 65).

CHAPTER III.

POWER OF EXECUTORS AND TRUSTEES TO SELL, &c.

Executors.

An Executor (but not an administrator, nor an administrator with will annexed, *re Clay and Tetley*, 16 Ch. D. 3) can sell and convey his testator's real estate, even though it is not devised to him, where the will contains a direction for him to sell (*Hamilton v. Buckmaster*, L. R., Eq. 232); or even where the will, containing a direction to sell, does not say who is to sell, if he (the executor) has to divide the proceeds (*re Sankey*, W. N. 1889, 79); or if (after 1859) the will contains a charge of debts or legacies and the estate is not devised to the trustee (22 & 23 Vict. c. 35, s. 16); and, also, in the case where the estate is devised to him charged with debts (*Corser v. Cartwright*, L. R., 7 H. L. 731).

The provisions of the Act 23 & 24 Vict. c. 35 do not apply to the case of a *beneficial* devise to a person of property charged with debts or legacies (Section 18; see *re Rebbeck*, *Bennett v. Rebbeck*, 71 L. T. 74).

A gift of legacies, followed by a gift of real and personal residue in one mass, is charged on the real estate (*Greville v. Browne*, 34 L. T. R., O. S., 88). The rule applies, although preceded by a direction that the debts and legacies shall be paid by the executors (*in re Brooke*, *Brooke v. Brooke*, 70 L. T. 72).

Where a testator directs that his debts shall be paid by

his executors, and also devises real estate to them, either beneficially or in trust, it is a question of intention, to be collected from the whole will, whether the estate so devised is charged with the payment of debts (*in re Bailey, Bailey v. Bailey*, 12 Ch. D. 268; *De Burgh v. Lawson*, 41 Ch. D. 568). And even where such intention appears, the executors can only sell and convey such real estate as is devised to them (*Cook v. Dawson*, 29 B. 123).

When a testator charges his real estate with the payment of his debts, and then devises it to a person not the executor, it is still undecided whether the beneficial devisee can make a good title without the executor, but the better opinion seems to be that he can (*Corser v. Cartwright*, L. R., 7 H. L. 731; *West of England & South District Bank v. Murch*, 23 Ch. D. 138).

But where executors, in whom the legal estate is vested, are selling *real* estate charged with debts, a purchaser is not bound or entitled to inquire whether debts remain unpaid, unless twenty years have elapsed since the testator's decease (*in re Tanqueray, Willaume and Landau*, 20 Ch. D. 465).

A purchaser of leaseholds from an executor is not bound or entitled to inquire whether there are any debts, even though the sale takes place *more* than twenty years after the testator's death (*re Whistler*, 35 Ch. D. 561; see also *re Molyneux and White*, 15 L. R. Ir. 383, and *re Venn & Furze's Contract*, 70 L. T. 312); though if the purchaser has actual notice that there are no debts unpaid, the executor cannot give a good title (*Carlyon v. Truscott*, L. R., 20 Eq. 348; *Forbes v. Peacock*, 1 Ph. 717, explained).

On a purchase from an executor of leaseholds, it is important to consider whether the executor has done or allowed any act which amounts to an assent to the bequest to the beneficiaries, as, if so, his power of sale is

gone (*Stevenson v. Mayor of Liverpool*, L. R., 10 Q. B. 81; *Thorne v. Thorne*, 69 L. T. 378).

An executor may assign leaseholds before he has obtained probate (*Brazier v. Hudson*, 8 Si. 67), but not an administrator (*Morgan v. Thomas*, 8 Ex. 302), nor an administrator *cum testamento annexo* (*Boxall v. Boxall*, 27 Ch. D. 220). An executor can sell although an administration suit has been commenced (*Verry v. Gibbons*, L. R., 8 Ch. 747); but a trustee cannot without the consent of the Court (*Bethel v. Abraham*, L. R., 17 Eq. 24), at any rate not until after the further consideration of the action (*re Mansel, Rhodes v. Jenkin*, 33 W. R. 727).

Trustees.

A Trustee has a power of sale by statute where an estate is devised to him charged with debts or legacies since 1859 (22 & 23 Vict. c. 35, ss. 14 and 15), and in such a case he is the proper person to sell. But, as we have seen above, if the whole estate is not devised to the trustee, the executor is the proper person to convey.

It has been held that where the instrument creating the trust *directs* that any vacancy in the trust shall be filled up within a specified period, which direction is not complied with, the surviving trustee can nevertheless sell, and can give a good discharge for the purchase money (*Warburton v. Sandys*, 14 Si. 622); but Mr. Dart recommends that this doctrine should be cautiously acted on (*Dart's Vendors and Purchasers*, 681). Section 22 of The Trustee Act, 1893, provides that in cases of trusts created by instruments coming into operation since December 31, 1881, where a power or trust is given to or vested in two or more trustees jointly, the same may, unless the contrary is expressed, be exercised or performed by the survivor or survivors of them for the time being.

When, as frequently happens, trust moneys have in breach of trust been invested upon mortgage, or in the purchase of real estate, and the trust appears on the title, the question often arises as to the competency of trustees to deal with the property without the concurrence of their *cestui que trust*. In the case of a mortgage, if the entire amount advanced is cleared by the sale, no difficulty will exist, as the trustees only do their duty in remedying the breach of trust, and realising the fund (*Dart's Vendors and Purchasers*, 687). In the case of an unauthorised *purchase* with trust funds, the right of the *cestui que trust* to elect to take the property as land instead of money creates a serious difficulty in the way of a sale by merely the trustees (*Dart*, 688); but the consent of one only of the beneficiaries can be asked for, since the concurrence of that one alone would be sufficient to show that all the beneficiaries had not elected to take the property in its unauthorised condition (*re Patten and Edmonton Guardians*, 52 L. J., Ch. 787).

A trustee can give a good receipt where the purchase money is paid to him under any trust or power (Trustee Act, 1893, s. 20; *Rudall & Greig's Trustee Act, 1893*, 83).

If a contract for sale omits to state that the vendor is a trustee, the purchaser could not insist on further covenants than that he had not done any act to incumber, nor could he refuse to complete upon the ground of the vendor declining to enter into such covenants (*Dart's Vendors and Purchasers*, 146).

It is important to distinguish between a power of sale and a trust for sale, as the former cannot be exercised without the consent of the tenant for life, whilst the latter can (23 & 24 Vict. c. 145, s. 10; Settled Land Act, 1882, s. 56; Settled Land Act, 1884, s. 6; *Taylor v. Poncia*, 25 Ch. D. 646).

The question whether the concurrence of the tenant for life is or is not required by Section 56 (2) of The Settled Land Act, 1882, where lands are sold for the payment of debts under a charge, is still unsettled (*Godefroi's Trusts*, 389).

Mr. Godefroi, in his *Law of Trusts*, just referred to, at page 380, says that where a power of sale is not to take effect until after the death of the tenant for life, the power of sale may be exercised before this event if the tenant for life gives his consent; but a consideration of the cases of *Carlyon v. Truscott* (L. R., 20 Eq. 348), *re Bryant and Barningham* (44 Ch. D. 218), and *re Head and MacDonald* (45 Ch. D. 310), referred to by Mr. Godefroi at pages 360 and 387, seem hardly to support this statement of the law. Where property is charged by a testator with the payment of a legacy or annuity made payable at a future period, and it is apparent from the will that the testator's intention is that the estate shall remain a security for such legacy or annuity, no sale can in the interval be safely effected, except subject to the legacy or annuity (*Dickinson v. Dickinson*, 3 Br. C. C. 19; *Dart's Vendors and Purchasers*, 691).

In a case where trustees were empowered to sell with the consent of the tenant for life, and the tenant for life became bankrupt, and had incumbered his life interest, *Held*, That the concurrence of the trustee in bankruptcy and the incumbrancers was essential to make a title (*in re Bedingfield and Herring*, 41 W. R. 413).

A *power* of sale is put an end to by the parties becoming absolutely entitled (*re Wright and Marshall*, 28 Ch. D. 93), unless an intention can be gathered that the power of sale is to be applied for the purpose of making a division amongst those entitled (*Peters v. Lewes Railway Co.*, 18 Ch. D. 429; *re Cotton and London School Board*, 19 Ch. D. 624); but a *trust* for sale is not (*re Tweedie and*

Miles, 27 Ch. D. 315); the distinction being that in the case of a trust for sale the land is converted in Equity. Subject to the above, a power of sale can be exercised so long as any of the purposes for which it was given subsist (*Wheate v. Hall*, 17 Ves. 80; *Taite v. Swinstead*, 26 Beav. 525); but it must be exercised within a reasonable time after the *cestui que trust* have obtained an absolute vested interest in possession (*re Lord Sudeley and Baines & Co.* [1894], 1 Ch. 534). But a trust for sale continues so long as it is not put an end to by the beneficiaries taking the property as land (*Biggs v. Peacock*, 22 Ch. D. 284; *re Hotchkys, Freke v. Calmady*, 32 Ch. D. 408; and *re Teale, Teale v. Teale*, 34 W. R. 248). The election by the beneficiaries to take the property as land must be quite clear (*Harper v. Hayes*, 2 D. F. & J. 542). See the cases collected in *Godefroi's Trusts*, pp. 378 to 383, and *Hayes & Jarman's Forms of Wills*, 299.

The fact of a power of sale not being limited in point of time does not appear to make it offend against the rule against perpetuities (*Lantsbery v. Collier*, 4 K. & J. 709). A trust for sale, however, may offend against the rule against perpetuities (*re Wood, Tullet v. Colville*, 71 L. T. 414; also *re Daveron, Bowen v. Churchill*, 69 L. T. 752).

A power to mortgage does not authorise a sale (*Drake v. Whitmore*, 5 De G. & Sm. 619).

By Section 63 of The Settled Land Act, 1882, a tenant for life of property devised or settled in trust for sale may sell on giving trustees the statutory notice. But by The Settled Land Act, 1884, the tenant for life cannot do this without first getting the consent of the Court, and registering the order as a *lis pendens*. Therefore, on purchasing from trustees, the purchaser should inquire whether the tenant for life has obtained such an order, and he should also search for *lis pendens*. See also pp. 27 to 29.

Minerals.—A trustee cannot, without the sanction of the Court, sell the land and minerals separately (Trustee Act, 1893, s. 44; *Rudall & Greig's Trustee Act, 1893*, 69 and 137).

This Section will not prevent a sale of the minerals separately under the provisions of The Settled Land Acts, 1882 to 1890 (see Settled Land Act, 1882, s. 17; Trustee Act, 1893, s. 24, *supra*).

CHAPTER IV.

SETTLEMENTS AND VOLUNTARY CONVEYANCES.

A GIFT of freeholds can only be made by deed or declaration of trust, and an attempted gift by deed poll without any declaration of trust would be bad (*Price v. Price*, 14 Beav. 598; *Vincent v. Vincent*, 56 L. T. 243); and so a voluntary assignment of leaseholds can only be made by instrument under seal (*Richards v. Delbridge*, L. R., 18 Eq. 11; *re Mills*, 7 W. R. 372).

Where a person executes and delivers a deed for the benefit of a volunteer, and there is nothing upon the face of the transaction or other evidence to show that it was intended to be revocable, it cannot be revoked, notwithstanding the want of consideration. The keeping the deed in the grantor's possession is not of itself sufficient to enable the donor to revoke it, though no notice of it may have been given to any one. But the deed must be complete, and no act must remain to be done to give full effect to it. If it can be shown that the grantor did not fully understand the effect of the deed, it will not be enforced in Equity (abridged from *Smith's Real and Personal Property*, 931 to 935).

So also where the deed was signed without sufficient explanation (*Proctor v. Robinson*, 35 Beav. 329); and where the legal effect was not understood by the settlor (*Price v. Price*, *ante*), the deed was not upheld. A voluntary conveyance will not be enforced where it has been obtained by pressure or undue influence (*Allcard v. Skinner*, 36 Ch. D. 145), or is made in favour of a person in a fiduciary position (*Taylor v. Johnston*, 19 Ch. D. 609), or is

made by a child in favour of a parent (*Hoblyn v. Hoblyn*, 41 Ch. D. 329).

The absence of a power of revocation raises a presumption that the deed was not understood by the settlor, but if it can be shown that the deed is the free act of the settlor, and that he knew what he was doing, the deed will be good, notwithstanding the absence of such a power (*Horan v. MacMahon*, 17 L. R. Ir. 641; *Hall v. Hall*, L. R., 8 Ch. 430), especially when such a power would be inconsistent with the object of the deed (*Henry v. Armstrong*, 18 Ch. D. 668).

But mere want of foresight on the part of the settlor is not enough to prevent a deed being operative (*Villers v. Beaumont*, 1 Vern. 100).

The fact of a settlor having destroyed a voluntary settlement in favour of a person to whom the contents have not even been communicated will not prevent the deed being operative (*Standing v. Bowring*, 31 Ch. D. 282; *re Blake, Blake v. Power*, 60 L. T. 663). Although a deed is cancelled, it does not divest the estate of the trustees therein named (*Xenos v. Wickham*, L. R., 2 H. L. 323).

As to voluntary deeds not parted with for a purpose never completed see *Cecil v. Butcher* (2 J. & W. 565).

But if the deed does not disclose, or it cannot otherwise be shown that a gift or benefit was intended, the cases coming under the head of "Resulting Trusts" are let in. A grant to, or purchase in the name of, a stranger without consideration results to the grantor (*Grey v. Grey*, 2 Swans. 598); but not in the case of a wife or child, which being taken to intend an advancement, no trust results to the grantor (see the leading case of *Dyer v. Dyer*, 1 W. & T.; also *Marshall v. Crutwell*, L. R., 20 Eq. 328; *Godefroi's Trusts*, 173 to 185).

By 13 Eliz. c. 5 all settlements and conveyances of real or personal property made to defeat creditors were declared

void as against such creditors, with the exception (Section 5) of conveyances of land or chattels made for good (which means "valuable," *Johnson v. Legard*, 6 M. & S. 60) consideration and *bonâ fide* in favour of persons having no notice of the fraud. It will be noticed that the Statute affects settlements for value as well as voluntary transactions (*Ex parte Cooper*, 59 L. T. 774, affirmed 5 M. B. R. 268; *Parnell v. Stedman*, 1 C. & E. 153; *re Johnson, Golden v. Gillam*, 20 Ch. D. 389, affirmed 51 L. J., Ch. 503; *re Hemingway v. Braithwaite*, 61 L. T. 224).

A settlement was held void under the Act where it was made to avoid an expected judgment (*Crossley v. Elworthy*, L. R., 12 Eq. 158), and an execution (*Bott v. Smith*, 21 Bea. 511). But the mere fact of a voluntary conveyance having the effect of preferring one creditor to another will not render it void under the Act (*Middleton v. Pollock*, 2 Ch. D. 104).

A voluntary conveyance with a power of revocation is deemed to be on the face of it fraudulent within the meaning of the Act (*Tarback v. Marbury*, 2 Ver. 510).

See also *Godefroi's Trusts*, 137 to 141.

Case law has created a further exception. A conveyance by a volunteer, under a voluntary settlement, to a purchaser or mortgagee without notice for valuable consideration is within the protection of the exception, so as to prevent the original settlement being a voluntary conveyance within the meaning of the Act (*Halifax Banking Co. v. Gledhill* [1891], 1 Ch. 31), and whether the interest be of a legal or an equitable nature (*idem*). See also *re Brall, Ex parte Norton* (69 L. T. 324).

It was held (before The Voluntary Conveyances Act, 1893, when the point was of importance) that an assignment of leaseholds in form voluntary was a conveyance for value within 27 Eliz. c. 4, owing to the liability on the part

of the assignee to pay the rent and perform the covenants of the lease (*Price v. Jenkins*, 5 Ch. D. 619). But such an assignment is not a conveyance for value within 13 Eliz. c. 5 (*re Ridler*, 22 Ch. D. 74).

By 27 Eliz. c. 4 it was provided that a voluntary conveyance of real estate could be defeated by a subsequent conveyance to a purchaser; but The Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), which, with a saving in respect of transactions completed before the passing thereof (see *Noyes v. Paterson*, 71 L. T. 228), practically repeals this Section of the Act of Elizabeth, by enacting, by Section 2, that no voluntary conveyance of any lands, tenements, or hereditaments, whether made before or after the passing of the Act, if in fact made *bonâ fide* and without any fraudulent intent, shall hereafter be deemed fraudulent or covinous within the meaning of the Act 27 Eliz. c. 4, by reason of any subsequent purchase for value, or be defeated under any of the provisions of the said Act by a conveyance made upon any such purchase, any rule of law notwithstanding.

The purchaser should also consider whether the transaction is affected by the Bankruptcy Law. By Section 47 of The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), any voluntary settlement or conveyance—except (1) a marriage settlement made before marriage; (2) a settlement after marriage, if of property of settlor coming to him in right of his wife, if in favour of wife or children; and (3) conveyance or mortgage in good faith and for valuable consideration—is made void as against the trustee in bankruptcy of the settlor if he becomes bankrupt within two years after the date of the settlement, and if he becomes bankrupt within ten years of that date, unless the parties claiming under the settlement can show that he was, at the time of making the settlement, able to pay all his debts without the aid of the settled property, and that the property

passed at once by the settlement (see *Ex parte* Todd, L. R., 19 Q. B. D. 186). The fact that under an assignment of leaseholds (otherwise voluntary) there is the liability of the volunteer to pay the rent, and perform the covenants, is not sufficient to bring it within the third exception above referred to (*Ex parte Hillman*, 10 Ch. D. 624).

Section 47 does not enable the Court to set aside a deed where the insolvent's estate is being administered in bankruptcy after his death (*re Gould*, L. R., 19 Q. B. D. 92).

In *Briggs v. Spicer* ([1891], 2 Ch. 127), decided in February, 1891, it was held that an unwilling purchaser could not be compelled to accept a title within ten years of a voluntary settlement forming part of the title, on the ground that there would be "parties claiming under the settlement," and that he might possibly be called on to show the settlor's solvency in accordance with the above Section. If the purchaser is a willing purchaser and wishes to get over the difficulty, he should ask for the settlor's concurrence in the conveyance, and for a declaration by him of his solvency without the aid of the settled property.

Some doubt has been cast on the decision in *Briggs v. Spicer* by the fact that Mr. Justice Vaughan Williams in two later cases has not followed the decision; but it will be for the Court of Appeal to say which is the correct view. The decisions referred to are (1) *re Vansitart, Ex parte Brown* (L. R. [1893], 1 Q. B. D. 181), and (2) *in re Brall, Ex parte Norton* (41 W. R. 623). In the former case Mr. Justice Vaughan Williams thought the intention of the Act was that it should operate only on those who claimed as donees under the voluntary settlement, and not on purchasers in good faith, without notice and for valuable consideration from such donees. The learned Judge referred to *Briggs v. Spicer*, and drew a distinction on the ground that the purchasers in that case had notice of the voluntary

settlement. But in the second case there does not appear to have been even this distinction. The same learned Judge, after pointing out that in this case the claimants had notice that the mortgagor claimed under a voluntary settlement, *held* that this did not prejudicially affect their right to priority, because they had no notice of any fact avoiding the voluntary settlement, nor that the settlor was insolvent, and the bankruptcy which brought the Section into operation had not occurred at the time of the advance and mortgage by the claimants to the mortgagor.

As to the effect of the words "pay to, or permit to receive," the rents on the legal estate under marriage settlements, Mr. Elphinstone says that he has been unable to find any case deciding the effect of these words in a deed. He points out, however, that the reason for the same words in a will being construed to pass the legal estate to the tenant for life is, that the words "permit and suffer" follow the words "to pay unto," and that where there is a repugnancy, the first words in a deed, and the last words in a will, prevail. He concludes, therefore, that in the case of a marriage settlement, the legal estate would remain in the trustees (*Elphinstone's Interpretation of Deeds*, 273).

It is considered correct for the purchaser to ask in his requisitions whether the vendor has made any settlement (see *Lloyd's Banking Co. v. Jones*, 29 Ch. D. 221), but apparently the vendor need not answer (*re Ford and Hill*, 10 Ch. D. 365).

As to Settlements made by an Infant see pp. 24 to 26.

As to Married Women see pp. 29 to 38.

See also "Conditions in Restraint of Alienation" and "Perpetuities," pp. 102 to 105.

See also "Execution and Completion of Deed, Notice and Consent," pp. 86 to 90.

As to a settlement forming the root of a title see p. 10.

CHAPTER V.

GOVERNMENT DUTIES.

The purchaser should satisfy himself that there is no Succession or Estate Duty charged on the property.

The new estate duty under The Finance Act, 1894, is a first charge on the property, except as against a *bonâ fide* purchaser for valuable consideration without notice (Section 8, Sub-section 18, and Section 9, Sub-section 1). The purchaser should ask for the production of a certificate from the Commissioners that duty has been paid (Section 9, Sub-section 2, and Section 11, Sub-section 1).

The payment of estate duty exempts property on which such duty has been paid from succession duty in the following cases :—

1. In respect of estates of persons dying after the 1st August, 1894, where the parties taking are lineals (Section 1 and Schedule I.).

2. Estates under £1,000 (Section 16, Sub-section 3).

Any gift of land or property, although operating as an immediate gift *inter vivos*, made twelve months before the death of the giver is liable to estate duty, and "gift" will include a settlement in consideration of marriage (Section 2, Sub-section *c*).

But estate duty is not payable in respect of property passing on the death of the deceased, by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, where such purchase was made for

full consideration paid to the vendor for his own use or benefit (Section 3).

In cases not coming within the above exemptions succession duty is payable on every disposition of property by reason whereof any person shall become beneficially entitled to any property or the income thereof upon the death of any person dying after May 19, 1853, and every devolution by law of any beneficial interest in property, &c.; and such duty is a first charge on the interest of the successor (Succession Duty Act, 1853, s. 2; see also 51 Vict. c. 8, ss. 21 and 22).

For the purpose of calculating the duty under a general power of appointment on the exercise of the power by the donee, the appointee pays duty upon a succession derived from the donee and not from the original settlor (*Attorney General v. Upton*, L. R., 1 Ex. 224). But an appointee under a limited power is deemed to take from the original settlor (Succession Duty Act, 1853, s. 4).

The purchaser of a reversion buys amongst other burdens that of the payment of the succession duty (*Cooper v. Trewby*, 28 Beav. 194; *in re Langham and Langham Hotel Co.*, 60 L. J., Ch. 110), and he should covenant with the vendor to indemnify him therefrom (5 *Bythewood & Jarman*, 599, *note*). Where he purchases the whole estate from the tenant for life and remainderman, he is entitled to have the estate in fee in possession cleared from the burden of the succession duty (*re Cooper & Allen's Contract*, 35 L. T. 890).

Where lands subject to leases at ground rents were sold subject thereto, but free from incumbrances, *Held*, That the succession duty payable in respect of the increased value of the property on the determination of the leases must be borne by the vendors (*in re Kidd v. Gibbon's Contract*, 68 L. T. 647).

Exemptions from Succession Duty.

1. See above as to when estate duty exempts from payment of succession duty.

2. The property, as against a purchaser for valuable consideration or a mortgagee, is not to remain charged with succession duty after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor has become entitled in possession, or, in the absence of such notice, after the expiration of twelve years from the happening of the event (whether before or after the passing of the Act) which gave rise to an immediate claim for duty (Inland Revenue Act, 1889, s. 12).

3. The husband or wife of a successor is exempt from duty if the property be settled by the other (Succession Duty Act, 1853, s. 18); but not if the property be settled by anyone else (*Attorney-General v. Robertson*, 68 L. T. 371).

4. Where the whole succession or successions, derived from the same predecessor and passing upon any death to any person, shall not amount in principal value to £100 (Succession Duty Act, 1853, s. 18).

5. By Section 38 of The Succession Duty Act, 1853, it is provided that an allowance may be made to a successor who has to relinquish other property. But the allowance is now limited to the value of property (acquired other than as a successor) actually passing from the successor to some other person (Inland Revenue Act, 1889, s. 10).

6. The exercise of a power of sale frees the land in the hands of the purchaser from succession duty, the liability being by Section 42 of The Succession Duty Act, 1853, shifted to the purchase-money (*Dugdale v. Meadows*, L. R., 6 Ch. 501). This decision has been doubted (see

2 *Dav. Prec.*, 4th ed., 383). A sale by the Court under The Settled Estates Act, 1877, was held to stand on the same footing as an express power, and the purchaser took the property free from liability to succession duty (*Warner's Settled Estates*, 17 Ch. D. 711). The same rule will, no doubt, apply to sales under The Settled Land Acts, 1882 to 1890 (*Dart's Vendors and Purchasers*, 669).

7. Where a person died before August 1st, 1894, and the property devolved on children and persons liable to pay one per cent. succession duty, such property as was included in the schedule to the affidavit for probate and administration duty was exempt from succession duty; all property included in the affidavit on which the fixed duty of thirty shillings had been paid was also exempt from succession duty (Inland Revenue Act, 1881, ss. 36 and 41).

PART IV.

COPYHOLDS.

In the following brief notes only the chief points in which Copyholds differ from Freeholds are touched upon.

Contract.

Unless the contract for sale of freeholds and copyholds intermixed contains a condition that the purchaser shall not be entitled to have the boundaries distinguished, he will be entitled to have the land of each particular tenure pointed out, and distinguished by its particular boundaries.

The usual condition relieving the vendor from proof of identity will not of itself deprive the purchaser of his right to have the boundaries of the tenures distinguished in the case of intermixed lands.

A condition that the purchaser is not to require any further proof of identity than is furnished by the deeds themselves is insufficient, in the absence of proof of identity as to the whole or a part of the property; it is, in effect, a contract that the deeds shall show identity, and if they do not, a good title is not made (*Dart's Vendors and Purchasers*, 175).

An agreement by the vendor to pay the expenses of the admittance, or to surrender and assure the property at his

own cost, will not extend to the payment of the fine on admittance, because the title is perfected by the admittance, and the fine is not due until afterwards (*Graham v. Sime*, 1 East. 632).

A purchaser is not bound to accept land of a different tenure to that which he contracted for (*Drewe v. Corp*, 9 Ves. Jun.; *Elton on Copyholds*, 1892 ed., 78), unless the purchaser has waived the point by proceeding with the treaty of purchase after discovering the facts (*Calcraft v. Roebuck*, 1 Ves. Jun. 221; *Elton*, 76).

When a copyholder contracts to surrender, but dies before performing his contract, a Court of Equity will supply the want of a surrender in favour of a purchaser for value or a mortgagee, and will enforce the contract against the heir, widow, devisee, or surviving joint tenant (*Elton*, 76).

Parties.

Appointee (*Donee under Power of*).—See "Trustee," *post*.

Bankrupt.—The trustee of a bankrupt can dispose of copyholds without being admitted (Bankruptcy Act, 1883, s. 53). He should convey by deed as if he were exercising a power of appointment limited to him under a surrender to such uses as he should appoint (5 *Byth. & Jarm.*, 336).

Building Society.—A building society registered under the Building Societies Act, 1874, may appoint trustees to be admitted, and they will only be liable to pay the fines and fees payable by a single tenant (Building Societies Act, 1874, s. 28). The usual provisions as to a statutory receipt also apply, and on production thereof, verified by oath, the steward will give a certificate of the satisfaction of the mortgage (Section 42). Similar provisions are contained in The Industrial and Provident Societies Act, 1876, and The Industrial and Provident Societies Act, 1893.

Corporation.—The lord may refuse to admit a corporation (*Elton*, 51).

Curtesy (*Tenant by the*).—See "Married Woman," *post.*

Executor and Trustee.—See "Trustee," *post.*

Friendly Society.—Similar provisions as to the admittance of friendly societies and discharge of mortgages to those relating to building societies are contained in The Friendly Societies Act, 1875 (see "Building Society," *ante*).

Heir-at-Law.—On the death of a copyholder the estate vests in his heir. A *Will* does not carry the estate to the devisee; it only has the effect of passing the right to be admitted. If the devisee does not apply to be admitted, the *heir* is entitled to be admitted. If neither the devisee nor heir was admitted, the lord could seize *quosque*, as he can insist that he shall never be without a tenant or possession of the land (*Garland v. Mead*, L. R., 6 Q. B. 441). In a contest between the devisee and the heir as to who should be admitted probably the lord would be bound to admit the devisee (*Rex v. Lord of Hexham Manor*, 5 A. & E. 559). But admittance of itself does not give a title if the person has not otherwise a title (*Zouch d. Forse v. Forse*, 7 East. 186).

If it is necessary for an infant heir to be admitted, he or his guardian can be admitted. If he is without a guardian he can in writing appoint some person to be admitted as attorney (11 Geo. IV. & 1 Will. IV. c. 65, s. 4).

Joint Tenants.—The admittance of one of several coparceners or joint tenants is the admittance of all (*Bence v. Gilpin*, L. R., 3 Ex. 76).

Lunatic.—By The Lunacy Act, 1890, it is provided that the committee of the estate of a lunatic may, under order of the Judge in Lunacy, sell, lease, exchange, or convey, in pursuance of a contract, any property belonging to a lunatic or in which he is interested (Sections 120 to 124).

Married Woman.—Before The Married Women's Property

Act, 1882, her surrender of her *legal* estate was void, unless made with her husband's consent and after separate examination (3 & 4 Will. IV. c. 74, s. 77); but since that Act her surrender is good without the husband's concurrence or separate examination (Sections 2 and 5). As to her *equitable* estates, she can, and always could, pass them, either by surrender with her husband's concurrence after separate examination or by an acknowledged deed (3 & 4 Will. IV. c. 74, s. 90; Married Women's Property Act, 1882, s. 5).

The purchaser should make inquiries as to the custom of the manor as to *freebench*, but ordinarily it is defeated by the husband's alienation, or by his will (*Lacey v. Hill*, L. R., 19 Eq. 346), or by his bankruptcy (*Parker v. Bleake*, Cro. Car. 568). It does not attach to equitable estates (3 *Preston on Abstracts*, 367; *Chaplin v. Chaplin*, 3 P. Wms. 229).

The Dower Act, 1833, does not apply to freebench (*Smith v. Adams*, 18 Beav. 499).

There is in most manors a custom for the husband to take a life interest by the *curtesy*, but he would not be entitled unless there *was* such a custom (3 *Preston on Abstracts*, 380).

The right to freebench and curtesy will attach even before admittance (*Vaughan v. Atkins*, 5 Burr. 2765).

Query whether divorce, by destroying the mutual rights between husband and wife, will defeat freebench and curtesy (see *Frampton v. Stephens*, 21 Ch. D. 164).

Mortgagee.—Where a mortgagor, having executed a covenant to surrender, neglected to make the conditional surrender for twenty-eight days after the mortgagee had demanded it, and tendered engrossment, the Court, on petition by the mortgagee, made a vesting order under Section 2 of The Trustee Extension Act, 1852 (*re Crowe's Mortgage*, L. R., 13 Eq. 26). This Section is now replaced by Section 32 of The Trustee Act, 1893 (*Rudall & Greig's*

Trustee Act, 1893, 116). It is not usual for a mortgagee to be admitted unless he is selling under his power of sale. The admittance of a mortgagee may alter the course of descent of the property (*Elton*, 80). As to discharge of the mortgage, a warrant of satisfaction is entered on the Court Roll, and a release with a covenant that he has not incumbered is given. But if the mortgage has rested merely on a covenant to surrender, the release with the covenant that he has not incumbered is sufficient. If the mortgagee has been admitted he would have to surrender (*Elton*, 80 and 81).

An equitable mortgage may be created by the mere deposit of the copies of the Court Roll (*Whitbread v. Jordan*, 1 Y. & C., Ex. 303; *Ex parte Warner*, 19 Ves. Jun. 202).

Tenants in common must be admitted separately (*Elton*, 73).

Tenant in tail.—Copyholds are not within the Statute *De Donis* (13 Edward I. c. 1), but may be entailed if there is a custom to warrant it. If there is no custom to entail, a grant, which would in the case of freeholds create an estate tail, will only in the case of copyholds create a conditional fee (2 *Preston on Abstracts*, 29; *Elton*, 22). But as a matter of fact the custom exists in most manors. A legal tenant in tail of copyholds may dispose of the same so as to bar the entail by surrender without enrolment (3 & 4 Will. IV. c. 74, ss. 50 and 54). An equitable tenant in tail may bar the entail either by surrender or by deed. Limited dispositions, as by way of mortgage or the like, operate as a bar in Equity and law so far as may be necessary to give effect thereto (Section 21). When the entail is barred by deed, such deed must be entered in the Court Rolls of the manor within six months after its execution (Sections 50, 53; *Gibbons v. Snape*, 1 De G. J. & S. 621; *Green v. Paterson*, 32 Ch. D. 95). The protector's consent is

required as in freeholds. The protector—that is, the owner of the prior estate—continues protector although he may have incumbered his estate (Section 22). The deeds need only be enrolled on the Court Rolls, and not in Chancery (Section 54). Where the consent is given by a distinct deed, the same will be void, unless entered on the Court Rolls with or before the assurance (Section 46). Where the tenant in tail surrenders, the consent can be given by the protector in person to the person taking the surrender (Section 52). It would seem that an estate tail in customary freeholds must be barred in the same way as in ordinary freeholds (*Elton*, 29).

Trustee.—A will devising the property has not the effect of conveying the estate to the devisee, but simply passes the right to be admitted (*Garland v. Mead*, L. R., 6 Q. B. 441); and therefore where the estate is devised to trustees, they, or those who have not disclaimed, must be admitted to make a title to the purchaser (*Reg. v. Garland*, L. R., 8 Q. B. 269). The usual practice in such a case is for all the trustees but one to disclaim to save the extra fines (*Bence v. Gilpin*, L. R., 3 Ex. 76). The fact of the executors (being also trustees) taking out probate will not prevent them disclaiming (*Wellesley v. Withers*, 4 E. & B. 750).

Where the will merely directs the executors to sell, without devising to them the legal estate, they can convey by bargain and sale, and the purchaser need only be admitted—that is, provided the sale can be effected before the lord can hold three courts, and seize *quosque* for want of a tenant (1 *Watk. Cop.* 105, 127, 334, 353); and the same remarks apply where the testator has not devised the estate to the trustees, but only given them a power to appoint in favour of a purchaser (*Elton*, 89; *Hayes & Jarman's Forms of Wills*, 134, 135).

If the sale cannot be effected before the three courts

have been held, it may be convenient and a saving of expense to tender the heir for admittance (*Elton*, 89). For until the admittance of the devisee or purchaser, the legal estate is in the customary heir (*Garland v. Mead*, L. R., 6 Q. B. 441).

Where an *equitable* tenant for life sold under The Settled Land Act, 1882, it was held that the trustees need not be admitted, and that the lord could only ask for one fine (*re Naylor & Spendlas's Contract*, 34 Ch. D. 217). But probably the rule would be otherwise if the sale had not been effected before the lord was in a position to seize *quosque* (*Hood & Challis's Conveyancing and Settled Land Acts*, 1895 ed., 221).

See "Heir-at-law," *ante*.

See also "Mortgage and Trust Estates of Inheritance," *post*.

Surrender and Admittance.

A copyholder cannot convey more than he has in the land, and it appears that he will not be bound by estoppel by his subsequent possession of a greater estate (*Elton*, 62) as a freeholder might be (p. 54, *ante*).

The legal estate in copyholds does not pass until admittance (see *Hall v. Bromley*, 35 Ch. D. 642); but the fact of admittance alone will not pass the legal estate (*Elton*, 68; *Scriven on Copyholds*, 95).

The purchaser should satisfy himself on the following points:—

(*a*) That the person who surrenders has himself been admitted. If not, a subsequent admittance will not make the instrument valid (*Elton*, 64).

(*b*) That the person admitted is the surrenderee (*Doe d. Blackwell v. Tomkins*, 11 East. 185; *Scriven*, 95). There are a few exceptions to this rule—*e.g.*, an equitable tenant in tail (3 & 4 Will. IV. c. 74,

ss. 53 and 77), an heir, also a remainderman. The admittance of the particular tenant is also the admission of the remainderman (*Elton*, 54).

(*c*) That the admittance is in accordance with the surrender, for the lord has no power to change the estate to be transferred, and if he admits otherwise than according to the surrender, the surrender will control the admittance (*Elton*, 52, 63).

If any surrender or admittance has been by attorney, the purchaser should inspect the power to satisfy himself that it authorised the act. He should also satisfy himself that the power had not been revoked, unless it came within the provisions of Section 8 or 9 of The Conveyancing Act, 1882 (see also pp. 15 and 16). The attorney appointed may be an infant, or a married woman, or any person under disability, if only of sound mind (*Elton*, 58, 59).

A covenant to surrender passes an equitable estate.

Equitable estates in copyholds cannot be surrendered, with some few exceptions, such as executory and contingent estates and a married woman's equitable estates. They can, of course, be passed by deed. A married woman's equitable interest can (with the concurrence of her husband after separate examination) be transferred either by surrender or deed.

The purchaser should see that the surrender contains proper words of limitation, as different manors have different customs as to what words are sufficient to pass the legal estate (see 5 *Bythewood & Jarman*, 316; *Elton*, 51, 52).

The purchaser should also see that the surrender is entered on the Rolls before payment of the purchase money, as otherwise a subsequent purchaser might get in the legal estate by surrender and admittance, and so gain the advantage of title (*Elton*, 75).

As to admittance, all that is really necessary for the admittance of a surrenderee is that the lord should in some unequivocal way express his consent to the surrenderee becoming his tenant (*Gilbert on Tenures*, 364; *Watkins on Copyhold*, 281, 282). For instance, the acceptance of quit rents by the steward or lord of a manor from a person entitled to be admitted has been held to operate as an implied admittance of such person, and if, therefore, such person refused to come in and be admitted after notice, the lord could not seize *quosque* (*The Ecclesiastical Commissioners for England v. Parr and Others*, 71 L. T. 65). But acts, which, if done by the lord personally, may amount to an acceptance and implied admittance of the tenant, do not always so amount if done by the steward (*Elton*, 68).

The title of the surrenderee after admittance relates back to the date of the surrender (*Elton*, 63, 69); and, as we have seen above, the operation of the admittance is governed by the limitation of uses in the surrender, the lord or steward having authority only to admit according to the surrender.

An admittance may now in all cases be taken without holding a Court, and either in or out of the manor, and by attorney. It would seem that the attorney may be appointed either *orally* or in writing (Copyhold Act, 1894, s. 84; *Rudall & Greig's Copyhold Act, 1894*, 127, 128).

Vesting Orders.

A vesting order of copyholds under The Trustee Act, 1850, or The Trustee Extension Act, 1852, did not dispense with surrender or admittance, unless made with the consent of the lord of the manor (Section 28 of the first-named Act). These Acts have now been repealed by The Trustee Act, 1893; and Section 34 of the same Act re-enacts Section 28 of

The Trustee Act, 1850. The consent of the lord may be obtained after the order has been made (*Paterson v. Paterson*, L. R., 2 Eq. 31). An exception to the rule arises in the case of trustees disclaiming before exercising any act of ownership over the estate, and before being admitted, so that there is no legal estate in them. In such a case the consent of the Court is not necessary to an order vesting the estate in the new trustees appointed by the order (*in re Flitcroft*, 1 Jur., N. S. 418).

The usual practice, however, is for the Court to appoint a person to convey under Section 28 of The Trustee Act, 1850, now replaced by Section 34 of the 1893 Act. By these Sections the lord is bound to admit such person, and he can only ask for one fine (*Rudall & Greig's Trustee Act, 1893*, 118).

Leases.

If there is any lease affecting the property, the purchaser should ascertain whether the lord's licence has been obtained, as the neglect is a cause of forfeiture, except (*a*) in the case of a lease for one year, or (*b*) where there is a special custom to the contrary (*Scriven*, 179).

A lease for one year, and so on from year to year, if not warranted by custom, will be a cause of forfeiture (*Elton*, 35). The lease will only be void as against the lord, and will be good between the parties. The lord may waive the forfeiture. The lord having sanctioned the lease, the lessee may assign or underlet without any fresh licence (*Elton*, 35). The lord's licence will in general last only during the continuance of his own estate (*Elton*, 36), unless given under the provisions of The Settled Land Act, 1882.

A copyholder's lease is a common law assurance, and where the property is in a register county the document must be registered in the local registry (*Elton*, 94, 95).

Mortgage and Trust Estates of Inheritance.

Before 1882 the same rules applied as in the case of freeholds (see pp. 108 and 109), subject to the ordinary law of copyholds that a person can only by his will name the person who is to be admitted, and that until his admittance the legal estate passes to ~~his~~ the testator's customary heir.

And also from 1882 to September, 1887, as in the case of freeholds, by virtue of Section 30 of The Conveyancing Act, 1881, the personal representatives of a sole trustee or mortgagee might, on his death, notwithstanding any testamentary disposition by him, dispose of such trust and mortgaged estates as if they were chattels real. Section 45 of The Copyhold Act, 1887, enacted that Section 30 of The Conveyancing Act, 1881, should not apply to land of copyhold or customary tenure vested in a tenant on the Court Rolls; and now Section 45 of The Copyhold Act, 1887, has, for the purposes of consolidation, been repealed by The Copyhold Act, 1894, and replaced by Section 88 of the latter Act. On the death, therefore, of a sole admitted trustee or mortgagee the customary legal estate will pass, as before, to the customary heir (see *Elton*, 101; and *in re Mills*, 40 Ch. D. 14, Ct. of App.). If such heir is an infant, and it is necessary for him to be admitted, it will still be necessary to apply for a vesting order under The Trustee Act, 1893 (see *in re Franklyn's Mortgagees*, W. N. [1888], 217). And so the old rules as to construction of devises with regard to the inclusion or exclusion of trust and mortgaged estates will still apply to copyholds (*Hood & Challis's Conveyancing and Settled Land Acts*, 1895 ed., 99; see also *ante*, pp. 108 and 109). Considering the words of Section 88 of The Copyhold Act, 1894, it would seem that a mere right to be admitted, as, for example, the right of a mortgagee to be admitted on a

conditional surrender, will still devolve under the provisions of Section 30 of The Conveyancing Act, 1881 (*Rudall & Greig's Copyhold Act, 1894*, 130).

The provisions of The Conveyancing Act, 1881, now replaced by Section 12 of The Trustee Act, 1893, as to vesting property subject to a trust in new trustees by a vesting declaration, do not apply to copyholds (*Rudall & Greig's Trustee Act, 1893*, 64 to 66).

Descent of Copyholds.

In the absence of a local custom of descent, and so far as such local custom does not expressly extend, copyholds are governed by the ordinary laws of inheritance (*in re Smart, Smart v. Smart*, 18 Ch. D. 165; *Elton*, 126).

See also "Heir-at-Law," *ante*.

Registration under Local Acts.

Copyhold surrenders do not require *registration* under the local acts, but enfranchisement deeds do (see *Reg. v. Middlesex Registrar*, 21 Q. B. D. 555; *Yorkshire Reg. Act, 1884*, s. 28). A devise does not require registration under the local acts (*Sugden's Vendors and Purchasers*, 732). The Lands Registry Act, 1862, does not apply to copyholds (see Section 3); and The Land Transfer Act, 1875, by Section 2, excludes copyholds from its purview (*Rudall & Greig's Copyhold Act, 1894*, 141). It would seem, therefore, that the saving as to these Acts contained in Section 97 of The Copyhold Act, 1894, was not necessary. A lease, being a common law assurance, requires registration under the local acts if the property is within their districts (*Elton*, 94, 95).

Miscellaneous.

Attendant terms are not often found on copyhold titles, but copyholds not being within the provisions of the Satisfied Terms Act (8 & 9 Vict. c. 112), it may in such cases still be necessary to trace the title of such terms during the whole of their existence (*Davidson's Concise Precedents in Conveyancing*, 26; *Elton*, 24).

The Statute of Uses does not apply to copyholds, and the effect of a surrender to uses is that it operates as a direction to the lord whom to admit (*Bac. Abr.* 779; *Eddlestone v. Collins*, 3 De G. M. & G. 1; *Elton*, 24).

The possession of covenants for title is *primâ facie* evidence of ownership, but the possession of the copies of the Court Roll is not. A deposit of them, however, has been held to create an equitable mortgage (*Whitbread v. Jordan*, 1 Y. & C. Ex. 303; *Pryce v. Bury*, 2 Drew. 11).

Mines and minerals do not pass under an enfranchisement deed (Copyhold Act, 1894, s. 23; *Rudall & Greig's Copyhold Act, 1894*, 47).

As to Enfranchisement generally see Copyhold Act, 1894 (which is a consolidation Act), and Messrs. Rudall & Greig's work thereon.

The fine is not payable until admittance, and therefore it is not payable by a vendor who has agreed to pay the cost of admittance, or to surrender and assure at his own cost (*Reg. v. Wellesley*, 2 E. & B. 924). If the vendor has not been previously admitted, the costs and charges in procuring his admission in order to enable him to make a surrender to the purchaser must be paid by him (*Drury v. Man*, 1 Atk. 95).

The purchaser should search the Court Rolls and inquire of the steward as to the customs of the manor, and particularly as to the customs of descent and freebench.

Stamps.

The steward of the manor stamps the surrender, and is allowed four months to make out and have a duly stamped copy of Court Roll of such surrender ready to be handed to the person entitled thereto (Stamp Act, 1891, s. 67). The steward is bound, under a penalty, to refuse to accept *in* Court any surrender, or to make *in* Court any grant until a note has been delivered to him stating all the facts which will enable him to properly stamp the copy of Court Roll. He is also bound to refuse to enter on the Court Rolls, or admit any person by virtue of, any surrender made *out* of Court which is not duly stamped (Section 66).

The same Act also provides that the copy of Court Roll of surrender made out of Court shall not be admitted in evidence unless the surrender is duly stamped, of which fact the certificate of the steward on the face of the copy shall be sufficient evidence; also that the entry on the Roll of a surrender shall not be evidence, unless the surrender if made *out* of Court, or the copy of Court Roll if made *in* Court, is duly stamped, of which fact the certificate of the steward in the margin of such entry is proof (Section 65).

The steward may refuse to proceed except on payment of his fees and the stamp duty (Section 68).

GENERAL POINTS FOR THE PURCHASER TO CONSIDER.

1. That the property described throughout the abstract is the same as that contracted to be sold, and, in case of leaseholds, that the term and rent are as described in the contract.

2. That the root of title is sufficient, and that the legal and equitable estate is properly traced to the parties who are to convey to the purchaser.

3. That there are no defects in the *form* of any of the documents abstracted.

4. That the parties to deeds throughout the abstract had power to buy and sell, and particularly as to the effect of any of them being bankrupts, married women, infants, trustees, &c.

5. That all documents are properly executed, stamped, and registered, and that consent thereto obtained and notice thereof given where necessary.

6. That there are no restrictions as to the user of the property, and, in the case of leaseholds, that the covenants in the lease have been performed.

7. That no breaches of trust are disclosed by the abstract.

8. That there are no estates or interests which require to be discharged: for instance—

   (*a*) Dower.
   (*b*) Curtesy.
   (*c*) Any other life estate.
   (*d*) Leases with option of purchase.
   (*e*) Right of pre-emption under Consolidation Acts.

9. That all incumbrances have been discharged: for instance—

   (*a*) Mortgages.
   (*b*) Succession and estate duties.
   (*c*) Road-making expenses.
   (*d*) Debts and legacies charged on land.
   (*e*) Executions, or *lis pendens.*

   N.B.—Tithe Rent Charge and Land Tax appear not to be incumbrances.

10. That any declarations necessary to complete the title have been obtained, such as declaration as to heirship, affidavit of intestacy, declaration that settlor solvent without settled property, &c.

11. That all necessary searches and inquiries have been made.

12. That all documents necessary to verify abstract have been produced.

13. That all deeds are to be handed over, or acknowledgment of right to their production to be given.

REMINDERS.

[The following Notes are merely Reminders, and must be read in connection with the fuller Notes, and not as being full and therefore accurate statements.]

The Contract (pages 1 to 7).

General condition that property sold subject to all easements, will not protect vendor against easements not disclosed by contract, of which he was aware, 4, 65.

Under open contract, purchaser may not be entitled to *all* easements implied by Conveyancing Act, 64.

General condition that purchaser shall not be entitled to compensation will only apply to trivial errors, 4, 66.

As to leaseholds, although purchaser deemed to have notice of contents of lease (unless he has not had opportunity of inspecting same), this will not preclude him from raising an objection if the contract contains misrepresentation, 4, 81.

Where property described as held under a *lease*, no title shown if document is an *under*lease, 4, 74.

In property held under an underlease, see that ground rent legally apportioned, 54.

Though conditions omit to state that vendor is a trustee, purchaser cannot insist on further covenants than that he has done no act to incumber, 76.

Notice to treat by company operates as a contract to take *all* property mentioned therein, 3.

Notice to take part of a building: company may be compelled to take the whole, 3.

Under open contract, vendor must stamp all deeds at his own expense, and, after 16th May, 1888, although the contract contains a stipulation to the contrary, 94, 95.

A contract for sale and purchase of land cannot be registered under the Yorkshire Registries Act, 90.

Root of Title (pages 8 to 10).

In leaseholds, purchaser entitled to abstract of lease, though more than sixty years old, 8.

On purchase of reversionary interest, purchaser entitled to abstract of document creating, 9.

An inclosure award is not generally a good root of title, 9, 10.

Settlement not good root of title, unless nature of document stated, 8.

Where general devise commences title, ask for proof of testator's seizin, 10.

Consider whether the title is one where an attempt should be made to get at the earlier title, 8.

Power of Parties in the Abstract to Purchase and Convey (pages 11 to 45).

A conveyance of freehold property by the owner to himself and another before 1881, and an assignment of leasehold property by the owner to himself and another before 1859, vested property in the "other," 12.

Appointment, Donee under Power of (pages 12 to 14).

Donee of a special power can only appoint in favour of the objects of the power, 13.

See that power does not offend against the rule against perpetuities, 13, 102, 103, 119.

See that there is a reference to the power or property when necessary, 13, 55.

Power to appoint by deed cannot be exercised by Will, and *vice versâ*, 13.

Where there is a contingency as to the person who is to exercise the power, an appointment by anticipation cannot be supported, 13.

Trustee in bankruptcy cannot exercise bankrupt's general power of appointment after his death, 14.

An infant cannot exercise a power if coupled with an interest, 24.

Attorney under Power of Attorney (pages 15, 16).

Ask for abstract of power to see that execution of deed authorised, 15.

Consider whether the act done by the attorney is one which cannot be delegated, 15.

An infant (except a married woman infant) cannot give a power of attorney, 15.

See that power not revoked, if not within Sections 8 and 9 of The Conveyancing Act, 1882, 15.

Bankrupts (pages 16, 17).

A receiving order alone does not divest the debtor's property, 16.

Bankruptcy does not divest bankrupt of estate held by him as a trustee, 17.

An undischarged bankrupt cannot convey property acquired after the bankruptcy, even though the trustee has not intervened, 17.

A husband is not precluded by his bankruptcy from concurring with his wife in an acknowledged deed, 31.

Bankrupt's trustee can assign leaseholds without the lessor's consent, though there be a covenant in the lease not to assign without consent, 91.

Bankrupt's trustee cannot exercise bankrupt's general power of appointment after his death, 14.

Certificate of appointment of trustee in bankruptcy should be registered under local Acts, 90.

Consider effect of disclaimer of leaseholds, and also of disclaimer of freeholds, by trustee of bankrupt, 16.

On annulment, property reverts to bankrupt, unless Court appoints some other person in whom to vest, 16.

Building Societies (pages 17 to 19).

When registered under the 1836 Act, ask for copy rules to see that statutory receipt is in form given by *rules*, and, unless signed by trustees named in mortgage, for copy minutes of appointment of new trustees, 17, 18.

When registered under the 1874 Act—

(*a*) Ask for production of certificate of incorporation.

(*b*) Also copy rules to see that seal properly affixed.

(*c*) See that statutory receipt, in form in *Schedule* to Act, sealed with the Company's seal, and countersigned by the secretary, 18.

When registered under the 1876 Act, or the 1893 Act, see that statutory receipt is in form in Schedule to Act *or* rules of Society, signed by two members of the committee, and countersigned by the secretary, 18.

Generally—

When purchasing from a building society under power of sale in mortgage, see that it is not a second mortgage, 19.

On sale by liquidators under a winding up, see that the legal estate has been conveyed to them, 19.

All the liquidators should join in the deed, 19.

Query whether a liquidator can effectually sign a statutory receipt, except under the 1893 Act, 19.

Companies, Trading (page 19).

Ask for production of Articles of Association to see that they do not contain any clauses limiting its power of buying and selling land, 19.

Also to see that the common seal has been properly affixed, 19.

On winding up of Company, seal should still be used, 19.

All the liquidators should join in the conveyance to the purchaser, 19.

Curtesy, Tenant by the (pages 35, 36).

Requisites: (*a*) marriage; (*b*) seizin, in possession, of wife for estate of inheritance; (*c*) issue capable of inheriting; and (*d*) death of wife, 35.

Query if there is curtesy of lands coming to wife other than by purchase, 35, 36.

Right of husband not affected by The Married Women's Property Act, 1882, 36.

Husband no right to curtesy of lands disposed of by wife in her lifetime, or by Will, 36.

Husband's right taken away by divorce, judicial separation, and protection order, 35.

Devisee of Leaseholds (page 21).

See that executor has assented to the bequest, 21.

See that neither devisee nor husband or wife a witness to will, 101.

Devise of income may pass the fee, 105.

Friendly Societies (pages 21 to 23).

Ask for copy of rules to see that power to buy or sell, 21, 22.

When change of trustees, ask for copy minutes of appointment of new trustees, and for production of Registrar's receipts for notice thereof, 22.

See that statutory receipt in form in Act *or* in rules of Society, signed by trustees, and countersigned by secretary, 22.

Heirs-at-Law and Co-Heiresses (pages 23, 24).

If letters of administration not taken out, ask for declaration that no will, 23.

Ask for declaration of proof and identity, with certificates of marriages, births, and deaths, 23.

If property in Yorkshire, affidavit of intestacy should be registered, 23.

Descent traced from last person who did *not* inherit, 23.

Co-heiresses, 23.

Infants (pages 24 to 26).

An infant's conveyance is voidable, and he can avoid or ratify same on attaining his majority, 24.

An infant's Will is void, 24, 99.

An infant cannot exercise a power if coupled with an interest, 24.

An infant (except a married woman infant) cannot give a power of attorney, 15.

Joint Tenants (pages 26, 27).

Consider whether any act has been done to sever the joint tenancy, and so change it into a tenancy in common, 26.

When there is notice of a partnership or joint speculation, consider whether the surviving partner can give a receipt, 27, 72, 73.

Joint account clause in mortgages before 1882, 40, 53.

Grant to husband and wife after 1883 creates a joint tenancy, but before that date a tenancy by entireties, 27, 33.

Life Tenants (pages 27 to 29, 117 to 119).

Trustees cannot exercise *power* of sale without the consent of the tenant for life, but they can a *trust* for sale, 117, 118.

If tenant for life bankrupt or incumbered his life estate, consent of trustee or incumbrancer required to exercise power of sale, 118.

Where power of sale of trustees to arise on death of tenant for life, query whether, with consent of tenant for life, an earlier sale can be effected, 118.

If the land is subject to a trust for sale, the life tenant cannot sell under the Settled Land Acts without the consent of the Court, 28, 119.

Any attempt to limit the powers of a life tenant under the Settled Land Acts will be void, 104, 105.

Restraint on anticipation will not prevent a married woman from exercising powers of a life tenant under Settled Land Acts, 32.

Husband and wife together can exercise powers of life tenant, 37.

Tenant in tail has powers of a life tenant, and need not bar the entail to enable him to pass the fee to the purchaser, 45.

Married Women (pages 29 to 38).

Consider carefully whether a married woman has power by deed to pass the legal and equitable estate, 29 to 38.

For instance:—She cannot pass the *legal* estate in freeholds held by her as separate property (not being separate property under The Married Women's Property Act, 1882) without husband and acknowledgment, 30.

Neither can she (without husband, &c.) pass either the legal *or* the equitable estate in freeholds not held for her separate use, 30.

Neither can she (without husband, &c.) bar her estate tail, 31.

Nor execute a disclaimer, 31.

But she can pass *bare* legal estate held by her as a trustee without husband and acknowledgment, 31.

A restraint on anticipation has no effect, unless the property is expressed to be separate estate, 32.

Restraint on anticipation will not prevent a married woman from exercising powers of a life tenant under Settled Land Acts, 32.

Consider whether married woman has power to make a Will, 34, 35, 99, 100.

For instance:—She cannot pass the *legal* estate in freeholds held by her as separate property, other than separate property under The Married Women's Property Act, 1882, nor the legal *or* equitable estate in freeholds not held for her separate use, not even with the consent of her husband, 34, 35, 99, 100.

She can, however, devise leaseholds if husband gives his consent to the Will, 35, 100.

Her Will *now* takes effect from the date of her death, 35, 100, 102 (see also *re Wylie*, *Wylie v. Moffatt*, *Law Times*, Notes of Cases, April 20, 1895).

If married woman dies without a Will, her leaseholds go to her husband without administration, and her freeholds to her heir, subject to right of husband to estate as tenant by the curtesy, 35 (see CURTESY, TENANT BY THE).

Conveyance by husband to wife of freeholds before 1881, and of leaseholds before 1882, void, unless trustee interposed, 33.

Grant to husband and wife after 1883 creates a joint tenancy, but before that date a tenancy by entireties, 27, 33.

Ascertain whether husband has exercised any power over his wife's property given him by law, 36, 37.

The Intestates' Act, 1890, which gives wife an interest in her husband's freeholds, does not apply to a partial intestacy, 38.

Dower, 33, 34.

Mortgagees (pages 39 to 43).

A mortgagee cannot buy from himself, and an agent appointed to sell or to collect the rents cannot buy from the mortgagee, 39.

Secretary of a Building Society cannot buy from the Society, 39.

Purchaser should see that mortgagor had power to mortgage, and therefore to give the power of sale, 39.

Sale must be "in professed exercise of the power of sale" conferred by the Conveyancing Act, to exempt the purchaser from enquiring whether the power of sale has arisen; but the purchaser will not be protected if he have *notice* of an irregularity, 39, 56.

On purchase from a transferee, see that *assigns* mentioned in power, 40.

Statutory transfer cannot be used to transfer an ordinary mortgage, 40.

A charge on the property may be created without express words of charge, 40.

An equitable mortgagee cannot pass the legal estate, 40.

Purchaser of equity of redemption should see that the mortgagee cannot consolidate, 40.

See that mortgage before 1882 contained a joint account clause, 40, 53.

Consider carefully as to devolution of mortgaged estates of inheritance on death, and as to *assigns* or *heir* being mentioned in the mortgage, to enable them to exercise power of sale, 41, 108, 109.

Also, effect of there being *no* personal representative in whom estate to vest, this case not being provided for by the Conveyancing Act, 41, 109.

Personal representative under Section 4 of Vendors and Purchasers Act could only *re-convey*; he could not exercise the power of sale, nor transfer, 41, 109.

Attornment clause with power of distress void, as not registered as a bill of sale, 42.

Mortgage of land passing machinery by being affixed, need not be registered as a bill of sale, 66.

But if the fixtures are mentioned and assigned, and further dominion given over them, than a mortgage without mention of them would give, the deed will be void as to such fixtures, as not having been registered, and, of course, in the case where more fixtures are assigned than would pass without mention of them, 66.

The deed will not be void in other respects, 66.

Mortgagee cannot sell land and minerals separately, 63.

Purchaser entitled to have mortgages discharged out of the purchase money, 41.

Railway Companies (pages 43, 44).

Company cannot sell land acquired for special purposes of undertaking for any purpose outside its Act, 43.

Company must sell superfluous land within ten years of time fixed for completion of works, unless a special time mentioned in Special Act, and it must sell absolutely, 43, 44.

Notice to treat operates as a contract to take *all* lands mentioned therein, 3.

Company giving notice to take *part* of a building may be compelled to take the *whole*, 3.

See that all rights of pre-emption have been satisfied or surrendered, 44.

See that receipt for purchase money is sealed with company's seal or signed by two directors, 44.

Where surface is sold to railway company, and company does not buy minerals after notice, owner can work them without regard to the surface, 62.

Tenants in Tail (pages 44, 45).

If deed purporting to bar entail be not enrolled within six months, estate for life only created, 44.

Base fee only created, if consent of protector not obtained, or, where consent taken separately, when not enrolled with or before disentailing deed, 45.

A mortgage (other than a mortgage by demise, which is the proper way to mortgage an estate tail) may operate to bar the entail, 45.

A tenant in tail has the powers of a life tenant under Settled Land Acts, and need not bar entail to give purchaser the legal fee, 45.

Rule in *Wild's Case* that a devise to A. and his children, where there are no children at the time of the devise, gives A. an estate tail, 45.

THE DIFFERENT PARTS OF A DEED.

Recitals (pages 46 to 50).

A recital in a deed twenty years old is only evidence of so much of the deed as is stated in recital, 46.

A sub-recital is not a recital for purposes of evidence under the Vendors and Purchasers Act and the Conveyancing Act, 50.

Recital of conditions of sale by auction brings them on the title, and copy should be asked for, 48.

Purchaser cannot go behind recital framed to keep notice of a trust off the title, 49.

Recitals may disclose a breach of trust, 48, 49.

If recital discloses that trustees have purchased property, or invested money on mortgage, as an investment, ascertain whether they had power to buy or mortgage, and if not, beneficiaries should join, 48, 49.

If recitals disclose a marriage, ascertain if any settlement executed, 49.

Marriage settlement varying from articles, as recited therein, may be made conformable to articles, 47, 48.

A recital that something intended to be done may amount to a covenant to *do* that thing, 49.

A recital may act as an estoppel, 50.

Recitals may control the operative words of a deed, and also the covenants, 47.

Consideration and Receipt Clause (pages 51 to 54).

See that deed not voluntary. The obligation of having to pay rent under a lease may prevent the deed being voluntary, 51, 123, 124.

Where no consideration, words "unto and to the use of" necessary to pass the fee, 51.

Fact of consideration being much smaller than in previous deeds may put purchaser on inquiry as to whether the whole property was intended to be passed, 51, 52.

Stamp Act requires consideration to be fully set forth, and therefore the price of fixtures, timber, &c., should be included in consideration on which stamp duty paid, 52.

Where builder builds a house and sells it to a purchaser, and the lease is made direct to the purchaser, the facts should be stated and stamp duty paid as on a lease *and* an assignment, 97.

Trustees cannot sell for a rentcharge or annuity, 52.

See that deed contains express words acknowledging receipt, as mere statement that money paid is not sufficient, 52.

One of several trustees cannot give a good receipt, 53.

See that vendor has no lien for unpaid purchase money, by reason of purchaser having notice that the whole of the money not paid, 53.

See that mortgage before 1882 contained joint account clause, 40, 53.

On purchase of land held on underlease, see that ground rent legally apportioned, 54.

Receipt for ground rent not evidence of performance of covenants in lease when rent a peppercorn rent, 81.

Receipt for ground rent not a waiver of breach of covenants in lease unless lessor had notice thereof, 81.

Operative Words (pages 54 to 56).

A grant will not pass more than the grantor has, except in some cases by estoppel, 54.

Word "grant" under Lands Clauses Consolidation Act, 1845, implies covenants for title, 55.

Word "demise" in a lease implies covenant for quiet enjoyment, 55. In fact such a covenant is implied from the mere relation of landlord and tenant (see ADDENDA).

Query whether "*grant* as beneficial owner" sufficient to give covenants for title, and whether words "*convey* as beneficial owner" should not be used, 55.

When purchasing under a power, see that reference is made to power or property when necessary, 13, 55.

On purchase under power of sale in a mortgage, see that sale made "in professed exercise of power," otherwise purchaser not exempt from seeing that power of sale arisen, 39, 56.

But the purchaser will not be protected if he have notice of irregularity, 39.

See that life tenant, lessor, &c., joins to give consent where necessary, 56.

See also HABENDUM.

Parcels (pages 57 to 66).

Where plan referred to, ask for copy, 58.

Inquire whether the roads have been dedicated and all payments made in respect thereof. In the case of land held under a lease, if the roads have not been dedicated, inquire of the lessor if anything owing for the making thereof, 58.

The vendor should pay for road-making if work complete at date of contract, 59.

There is an exception to the rule that the soil of half the road passes by a conveyance, in the case of—

(*a*) A conveyance of plot of land part of a building estate;

(*b*) A street in a town:

(*c*) Ground intended to be used as a highway, but which has never been dedicated; *but* the presumption does arise in the case of a private road, 59.

Ascertain definitely as to the ownership of the walls, and if one wall divides two properties see that the parties have agreed that such wall shall be a party wall. If property held under a lease see that any covenant to build walls has been complied with, 59, 80.

The presumption is that ditch and hedge belong to the owner of the land on which the hedge is planted, 60.

When a new description is made, see that it includes all that it is intended to include, 58.

An exception of "woods and underwoods" carries the soil itself on which they grow, 61.

Where land has formed part of a Land Society, ask for copy rules to see that trustees had power to convey minerals, 61.

A lease (for however long a period) does not pass to the lessee the right to work unopened mines, 61.

Distinction between a reservation of *mines* and a reservation of *minerals*, 62.

Exception of minerals carries the right to work them, but not so as to damage the surface, 61, 62.

Where surface sold to railway company and company does not buy minerals after notice, owner can work them without regard to the surface, 62.

Trustee cannot sell land and minerals separately, without the sanction of the Court, except under Settled Land Acts, 63.

Mortgagee cannot sell land and minerals separately, 63.

General words implied by the Conveyancing Act will pass easements first created by grantor, and may revive extinct easements, 63.

Under open contract purchaser may not be entitled to *all* easements implied by the Conveyancing Act, 64.

Grantor of part of property retains no easements over the part granted, except certain easements of necessity, 64, 65.

A reservation operates as a regrant, therefore see that grantee has executed deed, 65.

General condition that property sold subject to all easements will not protect vendor against easements not disclosed by contract of which he was aware, 4, 65.

General condition that purchaser shall not be entitled to compensation will only apply to trivial errors, 4, 66.

Mortgage of land passing machinery by being affixed need not be registered as a bill of sale, 66.

But if the fixtures are mentioned and assigned, and further dominion given over them than a mortgage without mention of them would give, the deed will be void as to such fixtures, as not having been

registered, and, of course, in the case where more fixtures are assigned than would pass without mention of them, 66.

Non-registration does not make the deed void in other respects, 66.

Habendum (pages 67 to 74).

Habendum of freeholds limiting a future estate is void unless cured by express grant *in præsenti* in premises, 69, 70.

Grant to A., habendum to A. and B.: B. would take nothing, 68.

Grant of Blackacre, habendum Blackacre and Whiteacre, Whiteacre will not pass, 67.

Grant to A. of Blackacre and Whiteacre, habendum Blackacre to A: A. will take an estate in fee in Blackacre, but only an estate for life in Whiteacre, 67, 68.

When the words "unto and to the use of" are omitted, see that deed contains consideration to prevent estate reverting to the grantor, 70.

But deed exercising power of appointment, should only appoint "to the use of," 70.

Before 1882, word "heirs" necessary to pass the fee, and words "heirs of the body" to pass an estate tail, 71.

Equitable estates require the same words of limitation as legal estates, 71, 72 (see also *Dearberg v. Letchford*, *Law Times*, Notes of Cases, April 20, 1895).

No words of limitation required in—

(*a*) Vesting declarations under Conveyancing Act;

(*b*) Statutory transfers;

(*c*) Release by one partner or one joint tenant to another, 72.

Consider whether there are any circumstances to make the grantees tenants in common, though on the face of it they appear to be joint tenants, 72, 73.

If trustees have no active duties to perform they do not take the legal estate, unless same granted to them in strict accordance with Statute of Uses, 73.

Rule wider in Wills, 74, 111, 112.

Statute of Uses does not apply to leaseholds, 74.

Where property is held under a lease, see that term and rent are the same as mentioned in contract, 74.

Property sold as held under a *lease*, no title shown if only an *under*lease, 74.

See that last days are got in, 74.

Purchaser entitled to have incumbrances discharged out of the purchase money, 41.

Tithe rent charge and land tax are not incumbrances, 74.

Covenants (pages 75 to 85).

A covenant will bind a person taking the benefit of a deed, although he has not executed it, 75.

The benefit of a covenant may be taken although the taker be not a party thereto, 75.

When land is sold to be used for a particular purpose, the grantor is under an obligation to abstain from doing anything on his adjoining property which would prevent such user, 75.

A covenantee may lose his right to enforce a covenant by conduct amounting to acquiescence, but acquiescence will not arise through constructive notice, 75.

The absence of covenants for title is not a defect of title, 75, 76.

Query whether "*grant* as beneficial owner" is sufficient to imply covenants for title, and whether "*convey* as beneficial owner" are not the necessary words, 76.

Though conditions omit to state that vendor a trustee, purchaser cannot insist on further covenants than that he has done no act to incumber, 76.

Query whether sale by liquidator as "trustee" carries covenant against incumbrances, 76.

The word "grant" in conveyances by public companies implies covenants for title, 77.

The word "demise" in a lease implies a covenant for quiet enjoyment, 77. In fact the mere relation of landlord and tenant seems to imply such a covenant (see ADDENDA).

Trustees selling with consent of tenant for life, the latter should give limited covenants for title, 77.

Vendor selling to a company under compulsion, under The Lands Clauses Consolidation Act, 1845, cannot be asked to give covenants for title, 77.

Covenants restricting the user of the property are an objection to title, 77.

Covenants affecting freehold property will not bind a purchaser unless—

(*a*) they are restrictive, *and*

(*b*) the purchaser has notice thereof;

and where a purchaser has bought land without notice of restrictive covenants, another purchaser from him would not be bound by such covenants, even though he had notice, 78.

Purchaser deemed to have notice if proper investigation would have disclosed the covenant, and notice of a deed is generally notice of its contents, 79.

Consider whether there is any notice on the title of a building scheme which has the effect of restricting the user of the land, 82, 83.

Generally speaking, as to leaseholds, all covenants to do something on the land demised will bind assignee, 80.

Covenant for quiet enjoyment in an underlease is no protection in case superior lessor takes possession, 81.

It is an objection to title if other property is included in the lease, with a general proviso for re-entry for breach of covenant, 81.

Last receipt for ground rent not evidence of performance of covenants where rent is a peppercorn rent, 81.

Acceptance of rent is not a waiver of a cause of forfeiture when lessor has not express notice of cause; and only of a continuing waiver up to the date of giving receipt, 81.

A waiver of a particular breach does not act as a *general* waiver, 81.

But if the lessor knowingly permit the tenant to expend money in alterations not allowed by the lease, this may amount to acquiescence, 81.

Covenants in a lease may be an objection to title if they are unusual, and the purchaser has not had a reasonable opportunity of inspecting same, 81; especially if there is a misrepresentation in the contract, 4.

An assignee is not liable to the lessor for the rent and covenants contained in a lease, after he has executed an assignment. He may, however, be under an obligation by covenant with the previous owner, 81, 82.

The absence of a legal covenant for production of deeds does not appear to be an objection to title if the purchaser will have an equitable right to their production, 84.

Covenants for production of deeds may give notice of an incumbrance not abstracted, 84.

Query whether a trustee should give undertaking for safe custody, 84.

Legal *and* equitable tenant for life entitled to custody of deeds, 84.

Where land held by several under a common title, he who gets possession of deeds is entitled to keep them, 84.

Vendor entitled to retain deeds relating to property in which he retains an interest, 85.

On sale of reversion, purchaser should covenant to pay succession duty, 85.

Covenant not to assign without lessor's consent will not prevent a devise, 85.

Nor will it prevent trustee of bankrupt from assigning without lessor's consent, 91.

Execution and Completion of Deed (pages 86 to 91).

Where the deed does not show any trace of a seal, the fact that it is stated in the attestation clause that the deed *was* sealed is not sufficient, 86.

Several deeds in one transaction bearing one date will be construed so as to give them intended effect, 87.

Where a deed contains a reservation of an easement it is necessary for grantee to execute the deed, 86.

Deed to which execution has been obtained by fraud does not pass any estate, even against a purchaser for value *without* notice, 87.

A person not executing a deed is bound by it if he takes the benefit of it, 86.

Where deed has been sealed by a building society, or by a company or corporation, ask for copy of rules or Articles of Association or incorporating Act, to see that the seal has been affixed in accordance with the formalities therein contained, 87.

In case of attorney executing deed, ask for copy of power to see that execution of deed is authorised thereby, 87.

Before 1882, attorney could only execute deed in the name of his principal, 88.

Powers of attorney executed in a British colony before a notary public may be acted on without further authentication, 88.

But where executed elsewhere, the seal or signature of the officer should be verified, 88.

Attestation is not essential to the validity of a deed, 88.

Appointments of trustees of property conveyed for religious or educational purposes require two witnesses, and to be in a special form, 88.

Absence of endorsed receipt before 1882 puts a purchaser on inquiry as to whether the vendor was paid, or has a lien on the deeds for unpaid purchase money, 89.

Upon a sale of superfluous lands, the receipt should be under the common seal, or under the hands of two of the directors or managers of the undertaking, 89.

Deeds registered in Yorkshire have priority according to the date of registration, 89.

Registration under the Yorkshire Registry Act, from 7th August, 1884, to 16th July, 1885, is notice to all the world, 89.

In Middlesex, notice of an unregistered deed may be binding in Equity, 89.

Registration of an assignment of leaseholds, containing in the memorial a recital of the lease, will not cure non-registration of the lease, 89.

A further charge requires registration, 89.

Certificate of appointment of trustee in bankruptcy requires registration, 90.

An agreement for the sale and purchase of land in Yorkshire cannot be registered, 90.

Registration under The Lands Registry Act, 1862, or The Land Transfer Act, 1875, exempts from registration under local Acts, 89, 90.

Assignment for the benefit of creditors must be stamped and registered under Deeds of Arrangements Act within seven days of first execution, 90.

It should also be registered under The Land Charges &c. Act, 90.

Disentailing deed should be enrolled in Chancery within six months of execution, 90.

Consent of protector, if given by a separate document, void unless enrolled with or before the assurance, 90.

Purchaser not entitled (in the absence of a condition to the contrary) to the benefit of an existing insurance, 90.

The purchaser should see that any necessary consent or notice has been given, 91.

A covenant in a lease not to assign without consent will not prevent a devise by Will, 91.

Nor will such a covenant prevent an alienation by operation of law, as by bankruptcy or a judgment, 91.

Nor will such a covenant prevent an assignment by a trustee in bankruptcy without such consent, 91.

Fine must not be exacted by lessor as a condition of giving his consent, 91.

Consent of lessor only extends to consent given, 91.

Notice to mortgagor previous to exercise of power of sale may be waived, 91, 92.

Where consent of tenant for life required, and he has incumbered his estate and been bankrupt, consent of incumbrancer and trustee in bankruptcy required, 92.

On purchase from specific devisee, see that assent of executor given to devise, 21.

If land subject to trust for sale, tenant for life cannot sell under the Settled Land Acts, without the consent of the Court, 28.

A *power* of sale cannot be exercised by trustees without consent of tenant for life, but a *trust* for sale can, 117, 118.

Constructive Notice (pages 92, 93).

Notice of a deed is notice of its contents, unless inspection cannot be obtained, 92.

Purchaser deemed to have notice of contents of lease unless covenants onerous, and he has not had a reasonable opportunity of inspecting same, 4, 81, 93.

Purchaser who does not investigate a title will be affected with notice of what he would have learned by investigation, 93.

Purchaser is not generally affected with notice unless—

(*a*) Fact within his own knowledge;

(*b*) If fact would have come to his knowledge if he had made such inquiries as he ought reasonably to have made;

(*c*) Unless in the same transaction it has or ought to have come to the knowledge of his solicitor, 93.

There can be no acquiescence from constructive notice, 93.

Stamps (pages 94 to 98).

Under open contract, vendor must stamp all deeds at his own expense, 94.

And after 16th May, 1888, notwithstanding stipulation to contrary, 95.

An escrow is not an executed instrument for purposes of the Stamp Law, 94.

A lost deed will be presumed to be duly stamped, 94.

Consent of lessor does not require a stamp, 95.

Nor record of minutes of appointment of a new trustee, 95.

Nor appointment of trustees for purposes of Settled Land Acts, 95.

But deed appointing new trustees and vesting property in them, requires two 10s. stamps, 95.

Deed operating as several conveyances requires separate duties, 95.

Duty must be paid on valuation of timber or fixtures passing without mention of them, 96.

Order for foreclosure not liable to duty, 96.

Nor order vesting disclaimed property under Bankruptcy Act, 98.

If legal estate outstanding in a stranger to transaction, and he joins in to convey, deed requires extra stamp, 96.

On sub-purchase, duty paid on sub-consideration, 96.

Contract under seal of company requires a 10s. stamp, 97.

Where a builder builds a house and sells same, and property leased direct to purchaser, deed should be stamped as a lease *and* an assignment, 97.

A mere receipt on an equitable mortgage is not liable to re-conveyance duty, but it is if it contains such words as "in full discharge," 97.

Transfer not liable to mortgage duty by reason of containing fresh proviso for redemption, 97.

An undertaking to pay the penalty, if at any time necessary to stamp deed, cannot be enforced, 98.

Wills Generally (pages 99 to 107).

The absence of a date will not invalidate a Will, 107.

When a grantor is a specific devisee, see that he or she is not an attesting witness, or the husband or wife of one, 101.

Where Will not witnessed by a solicitor, ascertain, if possible, circumstances of execution, 101.

See that Will not revoked by a subsequent marriage, 101.

The Wills Act does *not* mention "cancelling" as one of the modes in which a Will can be revoked, 101, 102.

Consider the different points necessary for a document to be incorporated in a Will, 100.

If the Will applies only to realty, and has not on this account been proved, ask for statutory declaration that it is the last Will, 100.

The Will of a lunatic speaks from the date of the Will, 102.

The Will of a married woman *now* speaks from the date of death unless a contrary intention appears, 100, 102 (see also *re Wylie*, *Wylie v. Moffat*, *Law Times*, Notes of Cases, April 20, 1895).

An infant cannot make a Will, 99.

A married woman cannot by Will pass the *legal* estate in her separate property, which is not separate property under the 1882 Act, 99.

Nor can she devise the legal *or* equitable estate in freeholds not settled for her separate use (except under a power), even with the consent of her husband, 99.

But she can, with the consent of her husband, devise her leaseholds held for her separate use (not separate use under the 1882 Act), and also her leaseholds not held for her separate use, 100.

The *appointment* of a residuary legatee will not pass freeholds to him without a devise, 105.

Leaseholds will not pass under a devise of real estate described generally, 105.

A devise of income may in some cases pass the fee, 105.

A bequest of "moneys on mortgage" may pass the legal estate, but not a bequest of "moneys on securities," 106.

Consider whether the rule against perpetuities has been infringed, 13, 102, 103, 119.

Condition in restraint of alienation is void, 103, 104.

Any attempt to limit the powers of a life tenant under the Settled Land Acts will be void, 104, 105.

Assent of executor necessary to perfect title of specific devisee of leaseholds, 106.

Covenant in a lease not to assign without the lessor's consent will not prevent a devise of the property, 106.

See that Will of freeholds is registered under local Acts—at any rate when purchase within six months of death, 106.

On purchase from heir-at-law of property in Yorkshire, see that affidavit of intestacy registered, 106, 107.

If the Will is not proved, ask for same to be handed over, but, if trusts not executed, ask for acknowledgment of right of production, 100.

Devolution of Estates on Death (pages 108 to 113).

Consider carefully as to the devolution of trust and mortgaged estates of *inheritance on death*, and notice whether *assigns* or *heirs* are mentioned in the trust or power, to enable them to execute same, 108, 109.

Also effect of there being *no* personal representative, which case is not provided for by the Conveyancing Act, 109.

Personal representative under Section 4 of the Vendors and Purchasers Act could only *re-convey*, and could not transfer or exercise the power of sale, 109.

On disclaimer by one trustee of real property, the legal estate and powers vest in the remaining trustees; on disclaimer of *all* trustees, legal estate vests in the heir, but he cannot exercise the powers, 112, 113.

Freeholds vested in a married woman as a *bare* trustee can be conveyed by her as if she were a *feme sole*, 110.

On death of executor after proving, leaseholds vest in *his* executor; but if he die intestate, administration *de bonis non* must be taken out to testator's estate, unless executor is also the trustee and has assented to the bequest, when they pass to his administrator, 110.

So on death of administrator, administration *de bonis non* must be taken out, 110.

Leaseholds do not pass to next-of-kin without an assignment, 110.

Where all the trustees predecease the testator, the legal personal representative has not power under Section 31 of The Conveyancing Act, 1881, to appoint new trustees, 113.

Consider whether trustees take the legal estate.

They generally, under Wills, only take so much as the purpose of trust requires. A direction to pay debts will pass the fee to them. They also take the fee when given a power of sale, 111, 112.

Such expressions in a Will as "permit," or "pay to or permit," the life tenant to receive the rents, will pass the legal estate to him, although the estate is devised to the trustees, 110 to 112, 116 to 120.

But similar words in a settlement will not take the legal estate out of the trustees, 126.

The bankruptcy of a trustee will not divest him of the legal estate, 113.

Equitable interests pass to new trustees by the fact of the appointment, without an assignment or vesting declaration, 113.

Powers of Executors and Trustees to Sell
(pages 114 to 120).

A direction in a Will to an executor to sell real estate will enable him to pass the legal estate to a purchaser; but it will not enable an administrator with Will annexed, to do so, 114.

A charge of debts or legacies (where estate not devised to the trustee) will also generally enable executor to sell and convey testator's freeholds, 114, 115.

Where the freeholds are devised to trustees charged with debts, *they* are the proper persons to sell and convey, 116.

Purchaser from executor of *freeholds* not entitled to inquire if there are debts, unless twenty years have elapsed since death, 115.

Purchaser from executor of *leaseholds* not entitled to inquire though *more* than twenty years have elapsed, 115.

Otherwise if purchaser has notice that no debts, 115.

Consider whether *survivor* of trustees had power to sell before 1881, 116.

A power of sale cannot be exercised without consent of tenant for life, but a trust for sale can, 117, 118.

If tenant for life bankrupt and incumbered his estate, the consent of trustee and incumbrancer required, 118.

Power of sale to take effect on the happening of a certain event cannot generally be exercised before that event, 118.

Where property charged with legacy, payable at a future date, and the Will indicates intention that property is to remain a security therefor, no sale can in the interval be made, except subject thereto, 118.

See that trust for sale does not offend against the rule against perpetuities, 119.

A power to mortgage does not authorise a sale, 119.

On purchase from trustees, purchaser should see that life tenant has not obtained an order for sale and registered same as a *lis pendens*, 119.

A trustee cannot (without the consent of the Court, or under the Settled Land Acts) sell the land and minerals separately, 120.

On purchase from executors or trustees, consider whether their power has come to an end. For instance: in case of leaseholds, where the executor has assented to the bequest, his power of sale is generally put an end to. So also a *power of sale* (but not a *trust for sale*) is generally put an end to by the parties becoming absolutely entitled, 115, 116, 118, 119.

Settlements and Voluntary Conveyances (pages 121 to 126).

A gift of freeholds cannot be made by a *deed poll*, 121.

A gift of leaseholds cannot be made by an instrument not under seal, 121.

A voluntary settlement is not a good root of title, unless the nature of the document is stated in the contract, 8.

Where a voluntary settlement appears on the title, endeavour to get the concurrence of the settlor in the conveyance to the purchaser; for if the settlement contains a power of revocation, the purchaser gets his assurance that it has not been revoked; and if it does not, it prevents the question being raised that the settlor did not understand the deed, 121 to 123.

Voluntary settlement void against trustee in bankruptcy if settlor bankrupt within two years; also if settlor bankrupt within ten years, unless it can be shown that he was solvent without the aid of the settled property, 124, 125.

Query whether a purchaser can be compelled to accept a title within ten years of a voluntary settlement; at any rate he should ask for the settlor to join in the conveyance, and for a declaration of his solvency without the aid of the property. 125.

Consider whether the deed is voidable under 13 Eliz. c. 5, on account of being made to defeat creditors. 122, 123.

A voluntary settlement will not now be defeated by a subsequent conveyance to a purchaser, 124.

The words "pay to" or "permit to receive" the rents will not, it seems, carry the legal estate to the life tenant, as in Wills, 126.

The purchaser should enquire whether there has been any marriage settlement, but probably the vendor need not answer, 126.

An infant's voluntary conveyance is voidable, and can be ratified or avoided on his attaining majority, 24.

Consider whether rule against perpetuities is infringed, 102, 103, 119.

The cancellation of a voluntary settlement will not divest the estate of the grantee given thereby, 122.

If a deed does not disclose or it cannot be shown that a gift was intended, there will be a resulting trust, except in favour of a wife or child, 122.

Government Duties (pages 127 to 130).

See that there is no succession duty or estate duty charged on the property, 127.

Gift of land made twelve months before death is liable to estate duty, 127.

Ask for production of certificate from Commissioners that estate duty paid when necessary, 127.

Purchaser of reversion pays the succession duty unless he purchases the whole property from tenant for life and remainderman, 128.

Property is not charged with succession duty after twelve years from event giving rise to the succession, 129.

Exercise of power of sale shifts duty to purchase money; also where property sold under the Settled Land Acts, 129, 130.

Leaseholds exempt from succession duty where death before August 1, 1894, and probate duty paid, where successors were lineals; also in all cases where 30s. duty was paid, 130.

Copyholds (pages 131 to 144).

Where copyholds and freeholds are intermixed, purchaser is entitled to have boundaries of land of each tenure pointed out, 131;

Notwithstanding condition relieving vendor from proof of identity, 131;

Or condition that purchaser not to require further proof of identity than that furnished by the deeds, 131.

The legal estate does not pass until admittance, but admittance may not pass the legal estate. See that the person who surrenders has himself been admitted; that the person admitted is the surrenderee; and that the admittance is in accordance with the surrender, 137 to 139.

See that surrender contains words of limitation required by custom of manor, 138.

If surrender or admittance by attorney, ask for copy of power to see that it is authorised; also see that power not revoked, unless the case is within Sections 8 or 9 of The Conveyancing Act, 1882, 138.

Equitable estates cannot, as a rule, be surrendered, 138.

Equitable tenant for life selling under the Settled Land Acts need not be admitted to give a title to purchaser, 137.

Trustee of bankrupt can dispose of copyholds without being admitted, 132.

The admittance of one of several joint tenants is the admittanee of all, 133; but tenants in eommon must be admitted separately, 135.

A vesting order does not dispense with surrender or admittanee, unless made with eonsent of lord of manor, 139, 140.

A devise by Will only passes the right to be admitted. In the meantime the estate is in the heir. If estate devised to trustees, those not disclaiming must be admitted to make a good title. But if estate is *not* devised to them, and testator has given them a power of sale, or a power to appoint, they ean eonvey by bargain and sale, or exereise the power, and the purehaser only need be admitted, if the sale ean be effeeted before the holding of three Conrts, 133, 136, 137.

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A lease for more than a year without the lord's consent may cause a forfeiture, 140.

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A lease must be registered under the local Acts, 140.

Mines and minerals will not pass under an enfranchisement deed, 143.

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Copyhold surrenders do not require registration under local Acts, but deeds of enfranchisement do, as also do leases of copyholds, 140, 142.

LIST OF TEXT BOOKS REFERRED TO AND CONSULTED.

Alpe's Law of Stamp Duties (1894 ed.).
Barker's Yorkshire Registries Acts (1884 ed.).
Broughton's Reminders for Conveyancers (1894 ed.).
Burton's Compendium of Law of Real Property (1856 ed.).
Bythewood & Jarman's Conveyancing (1888 ed.).
Challis's Real Property (1892 ed.).
Coke on Littleton (1832 ed.).
Cole's Ejectment.
Comyn's Abstracts of Title (1884 ed.).
Cruise's Digest (1835 ed.).
Dart's Vendors and Purchasers (1888 ed.).
Davidson's Precedents in Conveyancing (1880 ed.).
Davis's Law of Building Societies (1884 ed.).
Elphinstone's Interpretation of Deeds (1885 ed.).
Elton on Copyholds (1892 ed.).
Fisher on Mortgages (1884 ed.).
Fry on Specific Performance.
Gibson & Weldon's Law Notes.
Gilbert on Tenures (1824 ed.).
Goddard's Law of Easements (1877 ed.).
Godefroi's Law of Trusts (1891 ed.).
Gover's Advising on Title (1892 ed.).
Hawkins on Wills (1863 ed.).
Hayes & Jarman's Forms of Wills (1893 ed.).
Hood & Challis's Conveyancing and Settled Land Acts (1895 ed.).
Hunt's Boundaries and Fences (1870 ed.).

Jarman on Wills (1893 ed.).
Jordan & Gore-Browne's Handy Book on Companies (1895 ed.).
Lewin's Law of Trusts (1885 ed.).
Moore's Abstracts of Title (1886 ed.).
Prideaux's Precedents in Conveyancing (1893 and 1895 eds.).
Preston on Abstracts (1823 ed.).
Rudall & Greig's Copyhold Act, 1894 (1895 ed.).
Rudall & Greig's Trustee Act, 1893 (1894 ed.).
Scriven on Copyholds (1882 ed.).
Shepherd's Touchstone (1820 ed.).
Smith's Leading Cases (1887 ed.).
Smith's Real and Personal Property (1884 ed.).
Sugden on Powers (1861 ed.).
Sugden's Real Property Statutes (1862 ed.).
Sugden's Vendors and Purchasers (1862 ed.).
Sweet's Precedents in Conveyancing (1886 ed.).
Theobald on Wills (1885 ed.).
Tudor's Leading Cases on Real Property (1875 and 1879 eds.).
Watkins on Copyholds (1825 ed.).
White & Tudor's Leading Cases in Equity (1886 ed.).
White's Conveyancing Act, 1881 (1882 ed.).
Williams on Executors (1879 ed.).
Williams' Real Property (1892 ed.).
Wolstenholme & Turner's Conveyancing Acts.
Woodfall's Landlord and Tenant (13th ed.).

ADDENDA ET CORRIGENDA.

Page 2, line 4 - *After* "108" *add* "A solicitor cannot sign a contract for a vendor or purchaser without an express authority (*Smith v. Webster*, 3 Ch. D. 69)."

,, 4, ,, 22 - *For* "1 D. & J." *read* "1 De G. & J."

,, 6, ,, 12 - *For* "8 L. R., Ch." *read* "L. R., 8 Ch."

,, 9, ,, 31 - *After* "1874, s. 1," *read* the word "*Award*."

,, 12, ,, 24 - *For* "33 Vict." *read* "33 & 34 Vict."

,, 15, ,, 17 - *After* "attorney" *read* "given by a trustee."

,, 17, ,, 1 - *For* "*Nicols*" *read* "*Nichols*."

,, 17, ,, 4 - Erase the number "167."

,, 18, ,, 2 - *Add* "The Court cannot make an order winding up a building society registered under this Act where there are less than seven members (*re Bowling & Wilby's Contract*, 72 L. T. 18)."

,, 33, ,, 31 - Erase the number "167."

,, 35, ,, 27 - *For* "41 Vict." *read* "41 & 42 Vict."

,, 37, ,, 14 - ,, ,, ,,

,, 39, ,, 6 - *For* "5 Ch." *read* "5 Ch. D."

,, 39, ,, 16 - *For* "3 Eq." *read* "L. R., 3 Eq."

,, 53, ,, 14 - *After* "attorney" *read* "by a trustee."

,, 55, ,, 5 } *After* "643" *add* "and it has just been decided that such a covenant is implied from the mere relation of landlord and tenant (*Baynes v. Lloyd*, *Gibson's Law Notes*, May, 1895)."
,, 77, ,, 15 }

,, 61, ,, 30 - *For* "10 Vict." *read* "10 & 11 Vict."

,, 65, ,, 18 - *For* "355" *read* "567."

,, 66, ,, 22 - *After* "assigned," *add* "and further dominion be given over the fixtures than a mortgage without mention of them would give."

,, 66, ,, 24 - *After* "492," *add* "and of course in the case where the mention of the fixtures has the effect of carrying *more* fixtures than would pass without mention of them (*in re Brooke, Brooke v. Brooke*, 71 L. T. 398)."

,, 74, ,, 2 - *For* "*Mayor of Liverpool v. Stevenson*," *read* "*Stevenson v. Mayor of Liverpool*."

,, 84, ,, 3 - *After* "title" *read* "if the purchaser will have an equitable right to production."

,, 90, ,, 12 - *After* "registered" *read* "under Deeds of Arrangement Act."

,, 97, ,, 18 - *After* "conveyance" *read* "as well as a lease."

,, 106, ,, 27 - *Add* "This Section would not appear to be in force as regards property in Yorkshire, but the result is the same under The Yorkshire Registries Act, 1874 (*Prideaux*, 1895 ed., p. 138)."

,, 119, ,, 15 - *For* "2 D. F. & J." *read* "2 De G. F. & J."

,, 126, last line - *For* "10" *read* "8."

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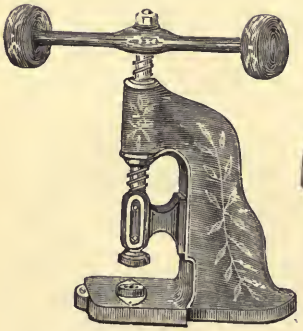

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